

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government: Nick Abramson, AUSA
U.S. Attorney's Office
53 Pleasant Street
Concord, NH 03301

For the Defendant: Lawrence A. Vogelman, Esq.
Nixon Raiche Vogelman &
Slawsky, P.A.
77 Central Street
Manchester, NH 03101

Court Reporter: Diane M. Churas, LCR, CRR
Official Court Reporter
U.S. District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1442

I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

WENDY E. IRISH

DIRECT

CROSS

REDIRECT

RECROSS

WENDY E. IRISH

By Mr. Irish 8

NANCY E. HASKELL

By Mr. Irish 15

1 BEFORE THE COURT

2 THE CLERK: Court has before it for
3 consideration a motion hearing in Criminal Case
4 13-cr-142-01-PB, United States of America versus
5 Jonathon Irish.

6 THE COURT: Mr. Irish, what did you want to
7 say?

8 THE DEFENDANT: Well, your Honor, I didn't
9 know which motion you wanted to address first.

10 THE COURT: Whatever you want. We'll take
11 them up in whatever order you choose.

12 THE DEFENDANT: Well, I think it's just the
13 bail motion. I would appreciate addressing that first
14 because my aunt is actually up here from Georgia and she
15 has to leave rather quickly to get back.

16 THE COURT: So do you still want your lawyer
17 to represent you on the bail hearing?

18 THE DEFENDANT: No, your Honor. I'll speak
19 for myself on the bail matter, your Honor.

20 THE COURT: Wait a second. I have to decide
21 whether I can let you do that because ordinarily -- you
22 have a lawyer. Your lawyer should speak for you. If
23 you want to fire your lawyer, then you either have to
24 get a new lawyer or you represent yourself.

25 THE DEFENDANT: Well, your Honor, I don't mean

1 to interrupt, however, I did inform Attorney Kirk
2 Simoneau, one of Attorney Vogelman's partners, roughly
3 about -- actually on 14 October that Attorney Vogelman
4 needed to file a motion to withdraw from the case
5 because of multiple issues, which we'll address after
6 this.

7 However, your Honor, I was informed that he
8 did not have to do that until this hearing. Attorney
9 Vogelman lied to myself as well as my family, told us
10 that he would file motions for bail, which he refused
11 and failed to do.

12 THE COURT: Wait a second.

13 THE DEFENDANT: I'm sorry, your Honor.

14 THE COURT: You have a witness who needs to
15 leave. Would the government object if I allowed him to
16 represent himself on the bail matter before taking up
17 whether to discharge Mr. Vogelman to try to accommodate
18 his request?

19 MR. ABRAMSON: Your Honor, I'm not familiar
20 with the legal ramifications of that, but as a practical
21 matter I do not have an objection to that.

22 THE COURT: Well, I try to think about -- if I
23 granted his request, I don't see how he can complain
24 that you never should have let me represent myself on
25 this matter even though I asked you as a convenience to

1 my witness to let me do it before determining counsel.

2 But, Mr. Vogelman, did you want to say
3 anything about that?

4 MR. VOGELMAN: No. There is authority for,
5 you know -- it doesn't happen often in this building for
6 hybrid representation. I've actually been involved in
7 cases where, for whatever reason, the federal judge let
8 both the defendant go pro se with standby counsel. This
9 is similar to that so I don't think there's any problem.

10 THE COURT: I don't believe in hybrid
11 representation. I believe in standby so -- but to
12 accommodate the defendant, I think we ought to just try
13 to let him do what he wants to do on the bail first
14 because he has a witness who may have to leave.

15 So that's fine. I will let you go ahead and
16 do that one first, and then we'll deal with the counsel
17 issue after you've done that.

18 So did you want to call a witness or did you
19 want to say something before you called a witness? What
20 did you want to do.

21 THE DEFENDANT: Well, I just wanted to inform
22 the Court what it's in regards to. My aunt has
23 extensive knowledge of my -- there have been claims
24 by -- I don't know if they're going to be called as
25 witnesses at trial, but persons who -- Agent Christiana

1 has interviewed specifically my biological abusive
2 father, John Charles Irish, where John Charles Irish
3 made the allegations that I'm, quote, unquote, a ticking
4 time bomb, that I'm a danger to the family, I'm a danger
5 to the community, and that nobody in my family wants
6 anything to do with me, your Honor.

7 THE COURT: Let's stop. Are you going to rely
8 on that testimony in opposition to bail?

9 MR. ABRAMSON: No, your Honor, we do not rely
10 on that with respect to the initial bail determination.

11 THE COURT: All right. So they're not going
12 to rely on anything that your father said. So we can
13 ignore that.

14 THE DEFENDANT: Yes, your Honor. Well, I
15 understand, your Honor, however, I feel that that very
16 well may come up at trial because of the credibility of
17 the individuals who they have interviewed.

18 THE COURT: I doubt I would let anybody
19 testify that you're a ticking time bomb at your trial.
20 I can't foresee how that would come up. Do you?

21 MR. ABRAMSON: No, your Honor, we certainly
22 would not elicit any testimony of that nature.

23 THE COURT: I don't think you need to worry
24 about that.

25 THE DEFENDANT: The concern, your Honor, is

1 they're making concerns of my dangerousness and so forth
2 and so on.

3 THE COURT: Do you want to call your aunt to
4 talk about that issue?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have an objection?

7 MR. ABRAMSON: No, your Honor.

8 THE COURT: Why don't we call her and you can
9 ask her whatever questions you want.

10 THE DEFENDANT: Wendy.

11 THE COURT: Could you come up, ma'am, and
12 stand by the witness stand and the clerk will place you
13 under oath.

14 WENDY ELIZABETH IRISH

15 having been duly sworn, testified as follows:

16 THE CLERK: Thank you. Would you please state
17 your name and spell your last name for the record.

18 THE WITNESS: Wendy Elizabeth Irish,
19 I-R-I-S-H.

20 THE COURT: Have a seat, ma'am. Let me
21 just -- to guide you here, focus on things that she can
22 say that will help me determine that you should be
23 released on bail. Don't go into a lot of bad things
24 that you want to try to refute because nobody is putting
25 on that evidence now. She can say things that will help

1 me decide you're not a bail risk, you can be released
2 without a danger that you will harm others, or that you
3 will flee. That's what I want to hear. Okay? So focus
4 on that. Go ahead.

5 THE DEFENDANT: Yes, your Honor.

6 DIRECT EXAMINATION

7 BY MR. IRISH:

8 Q. Aunt Wendy, you've known me my entire life;
9 correct?

10 A. Yes, I have.

11 Q. There's obviously multiple issues throughout
12 the family. Have I ever been a threat or a danger to
13 anyone in the community, anyone in the family or
14 anything of the nature?

15 A. No, you have not.

16 Q. Have I ever -- everyone -- it's no secret I
17 have had issues when I was younger which turned out to
18 be misdemeanors, violations, and whatnot. Have I ever
19 failed to appear for court?

20 A. No.

21 Q. Have I ever attempted to harm anyone? Have I
22 attempted to make an act of aggression or an act of
23 violence with another individual?

24 A. Not that I know of, no. And definitely nobody
25 in the family because you have actually had no contact

1 with my side of the family for years because of
2 incidents with your father. So there's no way you have
3 threatened my parents, my sister, my brother, my son, or
4 anybody because you have basically been cut off from the
5 family because of your father.

6 Q. Now, the knowledge you have of myself and the
7 family, could you please explain why I would be one of
8 if not the last person to actually be aggressive or
9 violent towards another individual because --
10 specifically towards violence I have been involved in in
11 the past that you know of?

12 A. I have never known you to hurt another human
13 being. I have never known you to -- other than maybe
14 yell, like we all lose our temper. I've never known you
15 to act out against anybody. I have never heard -- I've
16 been in contact -- we've reestablished contact about
17 two, two and a half years ago, and I have a son who has
18 Down's syndrome, and whenever you have seen him, you
19 have always shown a soft side to him. You have never
20 ever shown any signs of hostility or anything to me or
21 my elderly parents.

22 Q. Specifically, are you aware of any situations
23 or any events that have happened to myself or throughout
24 the family in our past as to why I would not -- why I
25 would refuse to be violent towards another individual?

1 THE COURT: You can ask -- is there a leading
2 question? Were you, like, abused? Do you want to talk
3 about how you were abused?

4 Q. Would you please explain to the Court the
5 violence that was acted against myself and my mother and
6 my sisters to explain to the Court why I refuse to be
7 like that person.

8 A. I know you're talking about your father who
9 has a very violent temper, who has abused you, your
10 sister, and has abused me. He's held a gun to my head,
11 he's held a knife to my throat, and you have always said
12 you would never ever be like your dad. He's the one
13 with the violence. He's the one who has pulled guns.
14 He's the one who has pulled knives. He's the one that
15 my family is afraid of, not you.

16 Q. Now, you're aware of situations that -- the
17 government is going to say it was a custody issue.
18 Everyone who knows the details of the case and is
19 intimate with the case knows that it was an illegal
20 custody issue and in essence an abduction with what
21 happened with my daughter.

22 A. Yes.

23 Q. You are also aware of the continued assaults
24 from my father during my adult life?

25 A. Yes. Your father had told me about those.

1 Q. Would you agree that there have been instances
2 in the past where people were more than surprised and
3 have even said that they would have acted and handled it
4 differently and possibly more aggressively?

5 A. Yes. There have been many times where your
6 dad has said he would kick your butt if you came near my
7 parents. He has said he would beat you if you came near
8 my parents, and that is the reason why you have not been
9 able to have a relationship with my side of the family.

10 Q. Well, specifically, Auntie, what I meant was
11 certain situations that I have dealt with with myself
12 and my family between John, the situation with our
13 daughter -- and I could be wrong, but I believe you even
14 said that, you know, somebody had spoken to you
15 regarding the fact that I could have -- I personally
16 could have handled several situations a lot differently
17 and I guess you can say violently?

18 A. I did tell you that you act very maturely when
19 it came to your dad standing on court steps telling the
20 news reporter that you were an unfit father, and you
21 were less than ten feet away.

22 Q. When it came to specifically the situation
23 with my daughter, weren't a lot of people surprised that
24 -- we'll be blunt about this. Were or were not a lot of
25 people surprised that I did not take my daughter back by

1 force and that I did allow the Court to go through the
2 motions?

3 A. Yes.

4 Q. Has there been anyone else in the family at
5 all, aside from my father, who has ever showed any form
6 of concern for myself or my actions or my violentness?

7 A. No.

8 THE DEFENDANT: Thank you, Auntie.

9 THE COURT: All right. Did you have any
10 questions?

11 MR. ABRAMSON: No, your Honor, I have no
12 questions for this witness.

13 THE COURT: I'm a little confused. Where do
14 you live?

15 THE WITNESS: Georgia.

16 THE COURT: And how frequently have you been
17 in contact with Mr. Irish, say, in the last year?

18 THE WITNESS: Which Mr. Irish?

19 THE COURT: I'm sorry, this one here in the
20 courtroom.

21 THE WITNESS: Before his incarceration, we
22 talked weekly on the phone, and I come up here -- I try
23 to come up every six months, and I saw Jonathon probably
24 two years ago for the first time in years.

25 THE COURT: So there were a number of years

1 where you didn't see him, and did you keep talking to
2 him on the phone during those years?

3 THE WITNESS: Yes. I've been in contact with
4 him on the phone off and on for years.

5 THE COURT: And then about two years ago you
6 saw him for the first time in a number of years?

7 THE WITNESS: Yes.

8 THE COURT: And then you would periodically
9 come back up and see him when you would visit again?

10 THE WITNESS: I mean 99 percent when I come
11 up, because my parents are elderly, I spend my time with
12 my parents. If I get the chance to see Jonathon, I do,
13 but I don't always get to see him.

14 THE COURT: I'm trying to figure out how much
15 contact where you're actually present with him over the
16 last, say, 12 months before he was incarcerated. How
17 many days were you actually with him, staying at his
18 house --

19 THE WITNESS: Oh, never. I've never stayed at
20 his house.

21 THE COURT: So you would see him during
22 meetings.

23 THE WITNESS: Brief meetings. We visited, but
24 we stayed in contact by the phone numerous times, text
25 numerous times, and I have a lot more contact with my

1 brother, with John.

2 THE COURT: He's the father?

3 THE WITNESS: Yes. I would see him on visits
4 and he would have conversations with me about Jonathon.

5 THE COURT: When you say John, he's the one
6 that abused Mr. Irish and said the bad things about him
7 on the courthouse steps?

8 THE WITNESS: Yes.

9 THE COURT: I don't know anything about this
10 custody courthouse thing. But he said something
11 negative about him and he's threatened him and he's the
12 one that you said held guns and knives and all that.

13 THE WITNESS: Yes. There's actually a
14 newscast on file where Jonathon -- where John was on the
15 news with a reporter. He sought her out to make his
16 comments about Jonathon being an unfit dad and he should
17 not get custody of his daughter. So there is a newscast
18 on that somewhere in the files.

19 THE COURT: All right. Thank you for coming.
20 You're excused, and if you have to catch a plane or
21 something, you can head back whenever you need to.

22 THE WITNESS: Thank you.

23 THE DEFENDANT: Thank you.

24 THE WITNESS: I love you.

25 THE DEFENDANT: Your Honor, my mother's

1 present as well. She's -- daily contact doesn't
2 describe it. We talk and text on the phone from sunup
3 to sundown and even throughout the night. I will see
4 her at least two or three times during the week. She
5 wasn't able to be here for the last bail hearing in
6 front of Judge McAuliffe because she was caring for our
7 minor daughter at that time because there was no one
8 else to do that. My mother can also speak to the fact
9 of --

10 THE COURT: Do you want to call her as a
11 witness?

12 THE DEFENDANT: Yes, please, your Honor.

13 THE COURT: All right. Go ahead.

14 THE DEFENDANT: Mum.

15 NANCY MARIE HASKELL

16 having been duly sworn, testified as follows:

17 THE CLERK: Could you state your name and
18 spell your name.

19 THE WITNESS: Nancy Marie Haskell,
20 H-A-S-K-E-L-L.

21 THE COURT: Go ahead.

22 DIRECT EXAMINATION

23 BY MR. IRISH:

24 Q. Now, I'm going to start off, there's a saying
25 in the family of, you know, between you and Leslie, I

1 couldn't get away with it. Is it true that in my youth
2 there was points in times where I was -- I was
3 essentially all but exiled out of the family due to my
4 behaviors which, correct me if I'm wrong, were proven to
5 be because of the medication that I was being
6 prescribed?

7 A. Yes. You were on multitudes of medication
8 that did not work for you. You had very odd adverse
9 reactions and people did not understand that.

10 Q. Including yourself?

11 A. Including myself.

12 Q. Now, we all -- sadly enough nowadays, not a
13 lot of people get along with their stepparents,
14 different reasons, different situations. Have you ever
15 known me to be violent or to act violently or
16 aggressively or cause harm to another individual?

17 A. You're not physically violent. You yell.

18 Q. I yell, I get frustrated. And then what
19 happens?

20 A. We all handle things differently. I cry, you
21 yell.

22 Q. And then I break down and cry.

23 A. You break down. You apologize.

24 Q. Now, throughout this situation, have you ever
25 known of -- has anyone threatened you or threatened

1 anyone else that you are aware of through --
2 specifically speaking since my incarceration a year and
3 two days ago?

4 A. Can you ask that question again, please.

5 Q. To your knowledge has yourself or anyone else,
6 whether it be my sisters, my stepfather, or my in-laws,
7 been threatened by anyone since this whole ordeal took
8 place?

9 A. They have been threatened by the federal
10 government.

11 Q. What about somebody -- there wasn't another
12 individual who had -- I'm sorry, it would actually be
13 before my incarceration.

14 A. Your father, John Irish.

15 Q. There wasn't a phone call made to you at
16 roughly 0230 in the morning?

17 A. Yes. The night before you were incarcerated
18 on the local charges and held by the federal custody,
19 about 3:30 in the morning I had asked a friend of yours
20 to stay with you. I had to take your grandmother back
21 to my house and care for her because you obviously --
22 you just couldn't at that point, and a friend of yours,
23 I asked for him to stay with you. And he promised me he
24 wouldn't leave you. About between 3 and 3:30 in the
25 morning, I received a phone call -- two phone calls, one

1 from his phone, one from your phone, and he said I'm
2 done with this and I'm going to go slit Libby's throat.

3 Now, Libby is Stephanie Taylor, your fiancee's
4 mother. And he said he was going to go slit her throat.
5 Your phone -- it initially came from your phone. Then
6 your phone died and the call was reestablished through a
7 number I did not know at the time. Eventually it was
8 determined that it was his phone.

9 THE COURT: Wait, wait, wait, I'm lost. Who
10 made the slit-her-throat comment?

11 THE WITNESS: A friend, an acquaintance of
12 Jonathon's.

13 THE COURT: When you say Jonathon, who are you
14 talking about?

15 THE WITNESS: My son Jonathon.

16 Q. Who made the threat?

17 A. James Brown.

18 THE COURT: Mr. Irish, what are you doing with
19 this stuff? I don't understand.

20 THE DEFENDANT: Your Honor, there's been
21 multiple times where I've been accused of being the one
22 making threatening accusations, and that may not have
23 any relevance yet. However, it does bring up the
24 fact --

25 THE COURT: Are you trying to show that it was

1 your friend that made the threat, not you?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So the purpose of this is to tell
4 me because you think the government is going to say keep
5 him in jail because he makes threats --

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Are you going to say keep him in
8 jail because he makes threats? I don't know. I have no
9 idea.

10 MR. ABRAMSON: I think that's part of the
11 calculus.

12 THE COURT: So go ahead. You want to try to
13 prove that this threat was made by your friend, not by
14 you.

15 THE WITNESS: Yes, your Honor.

16 Q. Correct or incorrect, I had no knowledge of
17 this conversation with you until when?

18 A. Later -- I actually didn't speak to you until
19 -- that was a Thursday night, Friday morning, 3:30
20 Friday morning, and later that day I went to meet you.
21 You were filing some papers at the courthouse and I went
22 to meet you and you had been arrested so I couldn't talk
23 to you. So it was days down the road when we finally
24 figured out that you didn't even have your phone with
25 you and that he had actually made those phone calls and

1 he was going to Maine, and he said he was going to go to
2 Maine and slit Libby's throat.

3 THE COURT: Did this guy make threats to other
4 people? I'm trying to figure out how does your
5 mother -- in making a threat to your mother, did you
6 report that to the police or something?

7 THE WITNESS: At the time it was 3:30 in the
8 morning. I had been woken up by a phone call. I didn't
9 know this person, but I knew it wasn't my son making the
10 threat. I had been trying to reach -- let me back up.
11 For the entire evening before, we had been trying to
12 reach Stephanie who had left their shared residence. We
13 had kept calling, Libby, Stephanie's mother, and she
14 wouldn't answer the phone, she wouldn't answer the
15 phone, she wouldn't answer the phone, and I guess I had
16 sort of felt in my mind that he's saying this, but he's
17 not going to go to Maine.

18 We couldn't reach Libby, Mrs. Millette (ph).
19 We couldn't reach her by phone. We really didn't have
20 any knowledge.

21 Then we discovered later on Friday that Mrs.
22 Millette had filed a restraining order against my son
23 because he threatened to kill her.

24 THE COURT: Oh, okay. So you want to try to
25 persuade me that any threats that they say you made to

1 Mrs. Millette were actually made by your friend, not
2 you. Is that what you're trying to do?

3 THE DEFENDANT: That as well, your Honor. I
4 did not know if that was going to come up. The reason I
5 did not want to outright ask her who made the threats to
6 Mrs. Millette, I did not want to be accused of leading
7 the witness.

8 THE COURT: That's all right. This isn't
9 subject to the strict Rules of Evidence. You're not a
10 lawyer. I'm going to give you a fair amount of latitude
11 here. But I've got to tell you, a lot of this stuff is
12 just sort of going by me because I don't even understand
13 why -- usually hearing testimony about threatening
14 calls, threatening to slit somebody's throat being made
15 by the defendant's friend, using the defendant's phone,
16 don't usually help promote getting somebody released on
17 bail. It usually works the other way.

18 THE DEFENDANT: I apologize, your Honor. Yes,
19 that's what that was for in case they bring up those
20 issues with Mrs. Millette that it was not myself and
21 that there's witnesses to that.

22 THE COURT: So somebody was making threats,
23 but it wasn't you.

24 THE DEFENDANT: Yes.

25 Q. Now, during my incarceration -- the beginning

1 stages of my incarceration at Rockingham County
2 facility, were you aware that I had been given an option
3 of either stay in 23-hour lockdown and not take
4 medication for my post-traumatic stress disorder and
5 anxiety or take the medication and be moved to another
6 unit?

7 A. I was. I even had a conversation with the
8 nursing department over there.

9 Q. And what was that conversation?

10 THE COURT: Can I ask my clerk to come up and
11 help me. Can you pull up the docket for this case?
12 I've lost it. Go ahead.

13 A. The conversation, it was very difficult
14 because you are over 18, but I also have a power of
15 attorney signed by you many years ago. So I had to go
16 and present my power of attorney, and they would discuss
17 some things with me, and basically I was able to give
18 them information, and that was that over the years the
19 doctors have tried many different medications for your
20 post-traumatic stress, your ADHD, and you had adverse
21 effects. You had very strange effects on some
22 medications that I suppose might go down in the record
23 books someday. Things that should work on most people
24 either don't work on you or it goes overboard and it
25 gives you very adverse reactions. And I explained that

1 to them and said I would ask that you let him try it
2 without the medication.

3 Q. And what was their response?

4 A. Nope. We make the medical decisions here. At
5 the time your family doctor made several attempts to
6 contact medical. I believe from the conversations I had
7 with Dr. Fisher, he, in fact, did. He even came to
8 visit you at the jail, and he tried to get them to
9 listen to him. There was once many, many years ago when
10 you were incarcerated on a motor vehicle charge I
11 believe it was that Dr. Fisher actually wrote a note
12 with the list of medications that didn't work. And
13 basically the jail does what they want to do. They give
14 you what they want you to have, and if you don't take
15 it, you're going to stay locked up.

16 Q. And you'll be punished for it.

17 A. Correct.

18 Q. Essentially forcing medication down your
19 throat even though it's not physically or mentally
20 healthy for the individual.

21 THE COURT: Why am I hearing this stuff now?

22 THE DEFENDANT: Well, your Honor, the reason I
23 bring that up -- and that will lead to the next question
24 with the witness is there are allegations of threatening
25 telephone calls. Now, if we can hold off on that one,

1 threatening telephone calls were alleged to have
2 happened at some point at a facility.

3 THE COURT: Are you saying that you made those
4 calls but you were on medications you didn't want to be
5 on?

6 THE DEFENDANT: Your Honor, I don't even know
7 what calls they are talking about.

8 THE COURT: Why don't we hear their evidence
9 before you respond.

10 THE DEFENDANT: Well, because it's in the
11 objection, your Honor. The thing is that there's no
12 dates or times of their allegations of the threats.

13 THE COURT: Why don't we do this. I'm trying
14 to find the most efficient way to get through this.

15 THE DEFENDANT: I apologize, your Honor.

16 THE COURT: Why don't we let the government --
17 because it seems like you want to refute evidence that
18 the government may or may not be putting on. In a large
19 way you hurt yourself rather than help yourself. So it
20 may be better for the government to try to explain why
21 you should be detained, and then you can try to rebut.
22 And if they don't argue that you should be retained
23 based on certain things, then you don't need to rebut
24 them. How are you going to try to -- what do you want
25 to do to try to show that he should be detained?

1 MR. ABRAMSON: Your Honor, as a preliminary
2 matter --

3 THE COURT: Ma'am, why don't you do this. Why
4 don't you step -- you don't have to go anywhere, do you?

5 THE WITNESS: No.

6 THE COURT: Can you stay around? So if you
7 could just wait for us and we'll get back to you to
8 finish up.

9 MR. ABRAMSON: Judge, I understand that you
10 were not the judge presiding over the initial bail
11 determination so I'm happy to walk through all of the
12 facts and all of the bases why the government feels that
13 detention is --

14 THE COURT: Did you want to put on some
15 additional evidence?

16 MR. ABRAMSON: No, and that's really my point
17 is I feel that this is actually a much narrower hearing
18 and that the standard under Rule 3142 is that once the
19 initial bail determination is made, the burden is really
20 on the defendant to show a change in circumstances.

21 THE COURT: I recognize that. That's why I
22 turned to him, but we're not getting that. So I want --
23 what he seems to want to do is add to or reassess a lot
24 of the arguments that were made at the initial bail
25 hearing.

1 THE DEFENDANT: Excuse me. If I may, your
2 Honor, yes, physically a bail hearing was held. And I
3 understand there's been a lot with this case and I'm --
4 obviously you have other cases as well you hear. So I'm
5 sure you may not recall the issues of why I fired
6 Attorney Jonathan Saxe. One of the reasons was the bail
7 hearing. He wouldn't even stand up to disagree with
8 anything they were saying. Therefore it was essentially
9 in layman's terms a dog and pony show.

10 THE COURT: Do we have a transcript of the
11 bail hearing that's been prepared?

12 MR. ABRAMSON: I do not presently have that in
13 my possession, your Honor.

14 THE COURT: Okay. So what I will do is I will
15 direct a transcript to be prepared. Who was the judge?
16 Judge McAuliffe?

17 | MR. ABRAMSON: Judge McAuliffe.

1 hasn't done that and can't do that. Therefore, he
2 should be detained. Right?

3 MR. ABRAMSON: That's correct, your Honor, but
4 to the extent we do need to reassess and walk through,
5 I'm more than happy to do that.

6 THE COURT: All right. Why don't you give me
7 a brief overview as to what you think are the reasons
8 why he was detained initially and why I should maintain
9 that decision. And you don't intend to put on any
10 additional evidence; is that right?

11 MR. ABRAMSON: That's correct, your Honor.

12 THE COURT: Okay. Go ahead and do that and
13 then we'll recall his witness and we'll hear more about
14 what he wants to say, and then I will take it under
15 advisement. I will get a transcript of the bail hearing
16 and I will issue a written decision on bail.

17 MR. ABRAMSON: Sure. So I think we start by
18 looking at the factors under 3142(g).

19 THE COURT: Can I interrupt and ask, do I have
20 something after this?

21 THE CLERK: You have an 11 and 11:30.

22 THE COURT: Can you tell the people -- what do
23 I have at 2?

24 THE CLERK: You have a hearing that I'm not
25 sure that the plaintiff is going to show up on.

1 THE COURT: Do I have anything at 1:30 or 1?
2 Why don't you tell the 11 and 11:30 people to come back
3 at 1:30 and I will try to do them at 1:30. I don't want
4 to keep them around.

5 THE CLERK: Okay.

6 THE COURT: Sorry about that, folks. I'm just
7 running late today. Go ahead.

19 The evidence for each of those counts is
20 overwhelming and I will limit my discussion here
21 essentially to statements made by the defendant,
22 inculpatory statements. As to the 1001 count we will
23 have the testimony in this case of multiple law
24 enforcement witnesses --

25 THE COURT: What was the false statement?

1 MR. ABRAMSON: That he had sold all of his
2 personal firearms to a friend named Tony. Both -- two
3 law enforcement witnesses will testify that that
4 statement was made. Subsequently in the next few days
5 the defendant was recorded in a telephone call telling a
6 cooperating witness that he had said that to the agents
7 and that, in fact, his guns were in a location that he
8 knew. And several days after that the defendant was
9 captured on videotape bringing those guns into the store
10 owned by the cooperating witness and essentially
11 admitting that those guns had not been sold, that they
12 had in fact been buried at his mother's campground for
13 safekeeping to avoid detection by law enforcement.

24 THE DEFENDANT: No, your Honor. The
25 government is actually lying and misquoting transcripts.

1 Unfortunately because Attorney Vogelman has refused to
2 give me my discovery, I'm unable to have these
3 transcripts to read verbatim to you.

4 THE COURT: Which will be wrong? That you
5 made the statement to the law enforcement agents or that
6 you made the statements that are recorded that they say
7 are recorded?

8 THE DEFENDANT: The recorded statements, the
9 way he's saying that I buried them at the campground to
10 retrieve in the future.

11 THE COURT: But they don't say the things that
12 the lawyer is telling me.

13 THE WITNESS: I believe it says they're buried
14 but not in the sense of buried underground, your Honor,
15 and it does not say to retrieve at a future date either.

16 THE COURT: Now, one of the things -- I
17 allowed you to represent yourself on this motion. One
18 of the things you have to be careful about -- I can't
19 give you legal advice, but you have a constitutional
20 right to remain silent.

21 THE WITNESS: I understand.

22 THE COURT: You don't have to disclose
23 anything about your case. If you choose to do that, you
24 might be giving advance warning to the prosecutor
25 about --

1 THE DEFENDANT: Attorney Saxe and Attorney
2 Vogelman have already done that. So there's nothing I
3 can say that won't make everything worse.

4 THE COURT: Just so you understand, if you
5 choose to speak, they're obviously going to hear it and
6 you might be revealing things that will be helpful to
7 you to keep quiet.

8 THE DEFENDANT: Your Honor, there is also the
9 fact that because of the negligence and ineffectiveness
10 of Attorney Saxe and Vogelman, I've had to do everything
11 verbally and the motion to compel --

12 THE COURT: I understand, I understand. We've
13 talked about that a lot. Did you want to say anything
14 else about his claim that the evidence against you is
15 strong on the 1001 charge?

16 THE DEFENDANT: Well, your Honor, the thing is
17 that, in speaking about the 1001 charge specifically,
18 I'm unsure of exactly -- because I've been told that
19 there's two different -- I've been told at least two
20 different versions of the conversation where that
21 supposedly happened.

22 Now, the conversation that they're saying that
23 happened in the plea bargain for the 15 months, the last
24 plea bargain I had before I went for the competency
25 evaluation in New York, the government is alleging that

1 that conversation -- the 1001 charge was a result of a
2 conversation that Philip Christiana was having with me
3 regarding my firearms transactions and questioning into
4 a federal investigation. Your Honor, that conversation
5 never happened that day and I have a witness to that.

6 MR. VOGELMAN: Judge, just so it's clear,
7 because I'm a little uncomfortable, I still technically
8 represent him.

9 THE DEFENDANT: No, you don't.

10 THE COURT: He does until I relieve you.

11 THE DEFENDANT: I apologize, your Honor.

12 MR. VOGELMAN: I just want the record to be
13 clear that if he were to listen to me, I'm advising him
14 definitely not to address the merits of the allegations
15 against him at this time.

16 THE COURT: That would seem to be the prudent
17 thing to do unless you can demonstrate beyond doubt that
18 you're not going to be found guilty of the charge.
19 Don't reveal your defense to the other side.

20 THE DEFENDANT: Oh, your Honor, I'm not
21 revealing the defense at all. I'm just simply stating
22 that there is two different versions of the conversation
23 that allegedly happened.

24 THE COURT: I understand, I understand.

25 What's the next charge and what's the evidence on the

1 next charge?

2 MR. ABRAMSON: Yes, your Honor. The next
3 charge is a count under 922(a)(6) for aiding and
4 abetting a straw purchase. We have the Form 4473 from
5 September 21st, 2013, on which date the defendant's
6 girlfriend, Stephanie Taylor, purchased an assault rifle
7 lower receiver from Riley's Sport Shop in Hooksett.
8 Putting aside the fact that Ms. Taylor testified under
9 oath before a grand jury that she purchased that gun at
10 the request of the defendant with the defendant's own
11 money, we have a recorded conversation between the
12 defendant and a cooperating witness in which the
13 defendant states that he had just purchased the -- I had
14 just purchased the lower receiver from Riley's and that
15 he had sunk all of his own money into the lower receiver
16 despite the fact that it's Ms. Taylor's name on the Form
17 4473.

18 THE COURT: Has she repudiated her testimony
19 in the grand jury?

20 MR. ABRAMSON: To date she has not repudiated
21 it --

22 THE DEFENDANT: Objection, your Honor, yes,
23 she has.

24 THE COURT: Okay. You need to calm down,
25 okay?

1 THE DEFENDANT: I apologize. I'm getting
2 upset with the lies. I apologize.

3 THE COURT: I know. You're going to hear a
4 lot of things that are upsetting to you.

5 I want to commend you, first of all. I know
6 how emotional this is for you. You've done a good job
7 of working with me. If you work with me, I will work
8 with you.

9 THE DEFENDANT: I apologize, your Honor.

10 THE COURT: But we've got to keep the anger
11 level down during the trial, okay?

12 THE DEFENDANT: I apologize.

13 THE COURT: So she has not repudiated it to
14 you. You say she has repudiated it. So let's disregard
15 that. Okay? I agree with you, let's set that aside.

16 You say you have a statement recorded saying
17 the things that you've said.

18 MR. ABRAMSON: Yes. We have a recorded
19 statement, your Honor, and then subsequently two weeks
20 later -- approximately two weeks later the defendant
21 sold a completed assault rifle which incorporated that
22 lower receiver to an undercover federal agent. Ms.
23 Taylor was not present for that actual transaction. Mr.
24 Irish sold that firearm.

25 THE COURT: The receivers, do they have serial

1 numbers or something?

2 MR. ABRAMSON: They do and we will be able to
3 match the serial number at trial with the firearm that
4 was purchased at Riley's. Finally, I believe it was on
5 November 25, 2013, the date that Mr. Irish was
6 transferred to federal custody --

7 THE DEFENDANT: November 26th.

8 MR. ABRAMSON: -- he participated in an
9 interview, waived his Miranda rights at an interview at
10 which I was present, and stated explicitly that he had
11 had Ms. Taylor purchase that firearm for him on that
12 date in order to avoid the background check because he
13 knew that he was going to be selling that gun to what
14 would eventually be an undercover officer and was afraid
15 that the delay would put that sale in jeopardy.

16 THE COURT: What's the other charge?

17 MR. ABRAMSON: The final charge is the regular
18 user of marijuana in possession of firearms. As to that
19 count, we did find drug paraphernalia at the residence
20 when a search warrant was executed in the form of a pipe
21 that there would be testimony is typically used to smoke
22 marijuana. We have at least two and possibly three
23 individuals who will be testifying that they sold
24 marijuana to the defendant on a regular basis, typically
25 a weekly basis throughout most of 2013 when the criminal

1 conduct occurred, and we will have multiple other
2 witnesses who will testify that the defendant used
3 marijuana with them on at least a weekly if not daily
4 basis. That will also be supported by a jail call which
5 we would seek to admit in which the defendant states
6 that he's been charged with this count and that there
7 are -- and I'm quoting loosely -- only a few individuals
8 who could testify that I used drugs with them.

9 THE COURT: Okay. Brief response, keeping in
10 mind what counsel said and what I have said, which is be
11 very careful that you don't disclose things that could
12 be beneficial to you. That right to remain silent is a
13 precious right. It gives the defendant a real
14 advantage, and if you surrender it too lightly, it can
15 be problematic for you. Go ahead.

16 THE DEFENDANT: I understand, your Honor.
17 Actually -- first of all, your Honor, I would like --
18 and this was one of the motions to suppress Saxe and
19 Vogelman refused to do. I would like to request that
20 the government be forced to refer to the firearms as
21 what they are, semiautomatic carbines, not assault
22 rifles, your Honor.

23 One required element to a weapon being
24 considered an assault rifle or an assault weapon is that
25 of selective firing --

1 THE COURT: We can wait till trial for that.
2 It doesn't really affect what's happening here. I'm a
3 judge. Those things don't affect me.

4 THE DEFENDANT: I understand, your Honor. I
5 just wanted to make that very clear.

6 Now, as far as everything else goes, I did --
7 and, again, the 4473 documents are in the discovery. I
8 had filled out the documents for the background check
9 and the background check had been performed for the
10 lower receiver to be purchased in my name. There was
11 the weight.

12 Now, I'm not going to get into the details of
13 the matter. We're going to have to wait till trial on
14 this. However, as the government denies, Stephanie has
15 refuted this and has explained things, such as the fact
16 that the FBI agent, Philip Christiana, specifically
17 asked her if she would lie on the stand for him and told
18 her it doesn't matter what you say. You're not going to
19 get in trouble.

20 And she has told that to Attorney Saxe as well
21 as Attorney Vogelman and they refused to do anything
22 about it. She has attempted to contact Attorney
23 Abramson, but he has not been available to speak with
24 her for whatever the reason may be. I understand he's a
25 busy individual, especially with his job and his

1 position.

2 Now, as far as the conversation goes and the
3 statements, I had requested that that conversation on 26
4 November, that morning, be done in a recorded location,
5 and Philip Christiana refused to do that. He said we're
6 not doing that.

7 THE COURT: Okay.

8 THE DEFENDANT: Now, your Honor, as well --

9 THE COURT: Finish up because none of those
10 things really -- they don't really address the issue
11 that the lawyer's raising, which is he's going to be
12 found guilty. All these things may be true --

13 THE DEFENDANT: I have no issue bringing it
14 out right now, your Honor, but as you said it could
15 taint the trial.

16 THE COURT: That's fine. So let's go on to
17 the other arguments. Do you have other arguments?

18 MR. ABRAMSON: I do, your Honor. And just to
19 address briefly with regard to Ms. Taylor --

20 THE DEFENDANT: Oh, real quick, if we can
21 speak on Count 5, the allegations of the marijuana use.

22 THE COURT: Yeah.

23 THE DEFENDANT: When I was arrested on 1
24 November I requested -- because I know many deputies
25 down there. I know many correctional officers. I

1 requested to take a urinalysis. They said, well, we
2 really don't have any reason to do that actually.

3 They never did one. My entire -- between
4 November 1 to November 26th -- November 26th, mind you,
5 was my first appearance here in this court. I have
6 requested multiple times to please be given a
7 urinalysis. I was refused that.

8 On 26 November when I came in, the attorney
9 room out by holding, Attorney Saxe came to speak with
10 me, first time I ever met the individual. It was before
11 the hearing, and then I believe it was after the hearing
12 they had probation come in. I believe it's probation.
13 A woman came in.

14 THE COURT: All right. So your point is if
15 they had given me drug tests, I would have shown I
16 didn't test positive for marijuana.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Those are points -- I understand
19 them. They don't really address the issue that he's
20 raising directly. But I understand your points. You
21 can make them at trial. That's fine.

22 We need to move on though. What are the other
23 arguments that you have.

24 MR. ABRAMSON: Yes, your Honor. Under
25 3142(g)(3), the history and characteristics of the

1 defendant, he's presently a Criminal History Category
2 III. I do believe that understates the nature of his
3 criminal history. There is essentially a banker's box
4 full of criminal materials related to his prior
5 convictions to police reports filed by family members,
6 members of his community, neighbors of his regarding
7 incidents during which he has made threats and in some
8 cases used his firearm in the sense of showing it in
9 order to make those threats appear to be more serious.

10 THE COURT: Were those detailed at the prior
11 hearing?

12 MR. ABRAMSON: They were, yes, your Honor.
13 And I'm happy to go into detail.

14 THE COURT: No, you don't need to. To the
15 extent you want to refute them through evidence, you can
16 do that at the appropriate time. What else?

17 MR. ABRAMSON: I think most importantly, your
18 Honor, for the purposes of this hearing and for the
19 prior hearing is the specific nature and seriousness of
20 the danger posed by the defendant under 3142(g)(4) and,
21 even more narrowly than that, the danger that he poses
22 to witnesses and potential witnesses at this trial.

23 There is a recorded jail call which I did not
24 provide the Court as an exhibit but I'm happy to make a
25 clip of that for you in which the defendant is

1 discussing a potential witness in this case, his belief
2 that that witness has flipped on him and is cooperating
3 against him, and makes a threat that he will cut the
4 witness's throat. He has also made statements --

5 THE COURT: Did you put that in the original
6 hearing?

7 MR. ABRAMSON: I did, yes, your Honor.

8 THE COURT: There's a transcript of that?

9 MR. ABRAMSON: There's not a transcript of the
10 call.

11 THE COURT: All right. Prepare a transcript
12 and give him a copy and submit a copy to the Court.

13 THE DEFENDANT: Your Honor, in order to argue
14 that today and to refute that, I need to know -- the
15 time of day has no bearing on it. I need to know the
16 date of that alleged telephone call.

17 THE COURT: That wasn't disclosed at the prior
18 hearing?

19 THE DEFENDANT: No, your Honor, it never has
20 been. And neither has the --

21 THE COURT: Stop. Disclose the date and make
22 a transcript and give it to him. Okay?

23 MR. ABRAMSON: Sure.

24 THE COURT: You haven't given him all this
25 stuff already?

1 THE DEFENDANT: No, your Honor.

2 MR. ABRAMSON: Well, the copies of all the
3 calls have been provided to the defendant in discovery.

4 THE COURT: And they don't say what the date
5 is of the call? There's no way to discern the date of
6 the call?

7 MR. ABRAMSON: Each call is dated and timed.

8 THE COURT: Mr. Vogelman should have a copy of
9 what was made available to him, the actual call with the
10 date.

11 MR. ABRAMSON: Yes, your Honor. Each jail
12 call in the government's possession has been provided to
13 the defendant in discovery.

14 THE DEFENDANT: Excuse me, your Honor. I have
15 reviewed all the recorded jail calls on my discovery
16 when I was at Strafford County because I had access to
17 the law library and the computer. Well, those alleged
18 calls are nowhere's in there.

19 Now, as far as the dates and times on the
20 telephone calls, I'm not sure if you are familiar with
21 computers or such, I'm rather ignorant when it comes to
22 them, but I have enough knowledge to be able to explain
23 that the only dates and times on those files for the
24 telephone calls, any of them, are the dates -- it's
25 called dates modifier. Meaning the dates that the file

1 was modified or added to the drive.

2 THE COURT: All right. They will tell you
3 specifically what the date is, if they haven't already.
4 Just give him that. If you want to file anything, give
5 it to him, get it transcribed right away, and file it
6 with the court when you've given him a copy. And within
7 seven days of the filing, if you want to submit anything
8 in supplemental, you can. Okay?

9 All right. So do you need to go into much
10 more detail than that? You say you have a transcript of
11 him threatening to -- did you say cut the head off?

12 MR. ABRAMSON: To cut his throat, your Honor.

13 THE COURT: Cut his throat, of a particular
14 witness.

15 MR. ABRAMSON: Of a particular witness.

16 THE COURT: Okay. So he says he didn't say
17 that. You will have a transcript and you will give him
18 a video copy or an audio copy of the call so he can
19 listen to it, see the transcript, know the date, and if
20 it says what it says, it's hard to see how he can be
21 released on bail. I don't think we need to go further
22 than that, do we?

23 MR. ABRAMSON: I agree, your Honor. The rest
24 of this argument follows in that vein. That's not the
25 only witness about whom similar statements have been

1 made.

2 THE COURT: All right. Do you have other
3 tapes of him doing that?

4 MR. ABRAMSON: There are other tapes in which
5 the defendant has made specific threats as to his
6 girlfriend, Stephanie Taylor, although I believe those
7 threats have since been resolved.

8 THE COURT: Let's just stick with what you've
9 got there, okay?

10 MR. ABRAMSON: Sure.

11 THE DEFENDANT: Your Honor, if I may, the
12 reason I need to know the dates and times of those
13 calls --

14 THE COURT: You'll get them, okay? He's going
15 to give them to you.

16 THE DEFENDANT: I understand. But I can
17 almost guarantee -- and I can tell you right now if it's
18 -- if it's what I think it was and the time frame I
19 think it was, it would have been when I was being forced
20 that medication that was causing this severe mental
21 state.

22 THE COURT: I'm going to let you file
23 something where you can explain anything you get. I
24 wasn't there, I didn't say it, I said it but I was on
25 drugs they were forcing me to take, it didn't mean what

1 they think it means, whatever. You can provide your
2 explanation, okay?

3 THE DEFENDANT: Now, the government spoke
4 about -- I'm not speaking verbatim, but regarding
5 threatening individuals with my firearm in the
6 community. Your Honor, there were two situations, both
7 of which were reported to law enforcement by myself.
8 One situation was midnight at night, midnight, 12:30, my
9 wife and I are getting ready to go to bed and a vehicle
10 pulls up to the stop sign directly across the street
11 from our driveway, shuts the lights off. I didn't know
12 what it was or who it was. So I throw my T-shirt on and
13 I go outside.

14 Now, mind you, your Honor, it's no secret
15 amongst law enforcement, amongst the community, I always
16 legally carried my .45, my 1911, my weapon. It was
17 always on my hip, even when I was home. So I had -- all
18 I had been able to do was take my T-shirt off when this
19 vehicle pulls up to the stop sign and shuts its lights
20 off. I didn't know who it was. I didn't know what it
21 was.

22 My weapon was on my hip. I went out to my
23 truck to turn the headlights on and my flashlight was
24 sitting on the seat of the truck. So I take my
25 flashlight and I go inspect the vehicle. Nobody's in

1 the vehicle. I look in the vehicle. There's -- it's
2 almost empty. There's not really anything in the
3 backseat. So I'm standing around, had my cellphone.
4 I'm putting the information into the memo pad for the
5 make and model and whatnot, and as I'm attempting to get
6 the registration number off the license plate, two
7 females come walking down the road saying is everything
8 okay? What's going on?

9 I didn't know who they were. All I did is I
10 saw two individuals walking down the road. They
11 addressed me when I shined my light on them and asked
12 them who they were and asked them if it was their
13 vehicle. They said yes, it was. We're just playing a
14 joke on our friends. I told them, I said, you can't
15 really do that at night around here. People don't know
16 what's going on, don't know who you are, and you freaked
17 my wife out and drove my dogs nuts, and now my daughter
18 and my elderly grandmother is awake because of this.
19 You know, this is ridiculous. I was about to call -- I
20 was dialing dispatch to report an abandoned vehicle
21 because I didn't know if somebody's house was getting
22 broken into.

23 So the vehicle leaves. I called dispatch. I
24 reported the vehicle. That's where that situation
25 ended.

1 THE COURT: So you didn't show them your gun?

2 THE DEFENDANT: No, your Honor. The weapon
3 was on my hip. It was not covered. It was open, plain
4 view. It was not concealed.

5 THE COURT: All right. Look, here's what
6 we've got to do. There are too many of these little
7 details where -- it's just going to get lost on me,
8 okay? We're going to have a transcript of that hearing
9 prepared. You can get a transcript of it. Everything
10 in there you think is wrong or needs to be explained,
11 you can write a detailed memorandum where you explain
12 every single fact that you want to explain and submit it
13 to me, okay? Because otherwise -- I wasn't here when
14 this hearing was held. I don't know what the details
15 are. Your telling me this is not going to register with
16 me. The only way I can make this work is we'll get a
17 transcript.

18 THE DEFENDANT: Your Honor, I understand. The
19 main problem is, which is why I've been having to rely
20 on my wife and my mother to do this is to help me
21 because I have severe damage to my right hand, which
22 makes writing a severe issue.

23 THE COURT: You can't have everything. You
24 can represent yourself or you can have a lawyer, but you
25 can't tell me I can't submit things because I can't

1 write.

2 THE DEFENDANT: I understand. I have an issue
3 doing it and I'm doing the best I can, your Honor. Real
4 quick.

5 THE COURT: You just have to submit it in
6 writing. The last comment, okay?

7 THE DEFENDANT: Real quick. If I may just
8 address the other alleged threat. Now, mind you, no
9 charges have ever been brought forward or weren't able
10 to be brought forward. The other alleged threat was
11 when an individual who had been speeding up and down the
12 road, I reported it to law enforcement. Law enforcement
13 went up to the individual's house, which is at the top
14 of the road, at the end of the to road before it turns
15 into the off-road trail.

16 Officer clears the scene and leaves. About
17 roughly ten minutes after the officer clears the scene,
18 individual with his roommates comes driving down the
19 road in his roommate's Camaro and parks in the middle of
20 the road right in front of my house as I'm walking from
21 my garage into my house. He walks up to the side street
22 to see if anyone's outside or coming down the road and
23 comes running over with his hand under his shirt like
24 this, simulating a weapon. I told him -- now, mind you,
25 he was coming -- not towards my property, onto my

1 property running at me.

2 All this happened within 30 seconds. I
3 instructed him let me see your hands, get off my
4 property, let me see your hands, I'm armed, let me see
5 your hands or I'm going to draw my weapon.

6 THE COURT: I've heard enough about it. I'm
7 not going to go through the back and forth of every
8 incidence that happened in your life, okay?

9 What you need to focus on is this, Mr. Irish.
10 This is the problem that you've had with your lawyers
11 and the Court and everything else. You're not focusing
12 on what you need to focus on, which is there are charges
13 pending against you. You need to focus on can the
14 government prove those charges, do I have a defense to
15 those charges? Those are the things that are going to
16 get you out of jail or result in you being in jail for a
17 long period of time. And to the extent you want to
18 focus on child custody matters and my abusive father and
19 people who I interact with and we pull guns and threaten
20 each other, that isn't going to get you anywhere. It's
21 a complete distraction that is going to end up hurting
22 you, and I want you to do what's best for you, and I
23 know what is best for you is to focus on the evidence
24 that the government has accumulated against you, not on
25 these threats and other stuff because that doesn't

1 influence whether you will be found guilty, about what
2 are the charges against me.

3 They say they have you on videotape and taped
4 making statements that are flatly inconsistent with
5 statements you made to the investigators. They say they
6 have very strong evidence about this receiver. You're
7 going --

8 THE DEFENDANT: I can go into detail, your
9 Honor, but, again, as you said, it could taint the
10 trial.

11 Now, your Honor, the thing is is that I want
12 every one of these witnesses who said they smoked
13 marijuana with me --

14 THE COURT: Here's how we're going to proceed,
15 okay, because we've been at this an hour and we haven't
16 made any real progress. I'm going to direct the clerk
17 to have a transcript prepared of the bail hearing, which
18 should have been recorded. So someone will prepare a
19 transcript of that. A copy of that transcript will be
20 provided to the government, to the defendant, and to the
21 judge. I will give you 14 days from the date that
22 transcript is prepared to submit a memorandum in which
23 you tell me anything you want to tell me about what I
24 should think about that transcript. You want to make
25 factual proffers, you want to explain that doesn't

1 really mean what they say, you can do that. Okay?

2 I'm going to direct -- did I set a time for
3 you to provide the audio and a transcript of the --
4 threatening call you said?

5 MR. ABRAMSON: I don't believe you did, your
6 Honor.

7 THE COURT: Okay. So you will do that within
8 seven days. Okay? Within seven days thereafter. So
9 seven days after you get this, any kind of submission
10 you want to make in response to that, you will make.
11 When I receive the transcript of the bail hearing, the
12 transcript of the call, and a copy of the audio of the
13 call, when I receive his response to that transcript and
14 the transcript of the bail hearing, the transcript of
15 the audio call, I will issue a written decision on bail,
16 and that's how I'm going to address bail.

17 Is there anything else that you need to do,
18 that you need to tell me about with respect to bail.

19 THE DEFENDANT: Well, real quick, your Honor,
20 just a couple things. Number one, specifically the
21 phone calls. When Mr. Abramson spoke to Dr. Damesa
22 regarding the -- regarding the evaluation, he made
23 reference to listening to 30 hours of jail calls.
24 And -- where is it. If I can find it, your Honor. I
25 apologize. He had made reference saying -- here it is.

1 AUSA Abramson noted that since he has had -- since had a
2 fair amount of contact with Mr. Irish and he listened to
3 approximately 30 hours of jail telephone calls, AUSA
4 Abramson said Mr. Irish was taking unknown psychotropic
5 medications in November and December of 2013. He
6 explained when -- this is page 17. He explained, when
7 he was actively taking the medication, you could tell a
8 difference as Mr. Irish was reportedly, quote, unquote,
9 more coherent on those phone calls during the time
10 period and lost his temper less frequently.

11 But no mention of these threats, just for the
12 record.

13 THE COURT: You can put that in your response.
14 Let me just -- you really need to wrap up.

15 THE DEFENDANT: I understand. Real quick, the
16 last plea offer, which was given after this last hearing
17 when you had spoken to Attorney Vogelman regarding the
18 motion to dismiss for misconduct, I returned back to the
19 jail and I speak to my wife. She says we need to get
20 ahold of Larry immediately.

21 They had an offer and the offer was as long as
22 I agree not to file the motion to dismiss based on the
23 outrageous misconduct by the government, the government
24 would agree to give me a plea deal of 12 months and
25 1 day and would release me the second or third week of

1 October.

2 Now, your Honor, if anyone wants to refute
3 that, I can get the jail calls from the facility with
4 Attorney Vogelman as well as I have the letter here from
5 Attorney Vogelman.

6 So that being said, if I was a potential
7 threat to witnesses or anyone else, it would not matter
8 whether it was post trial or pretrial. A threat would
9 be a threat, and one with reasonable thought process
10 would think, well, a person would be more upset and more
11 likely to be violent towards a witness after they
12 were --

13 THE COURT: I have to break. I can't go on
14 any longer. This has completely worn me down.

15 Let me speak to the defendant's mother just
16 briefly. I appreciate you being here. I hope you
17 understand something, which is truly the case. I'm
18 going to give your son a fair trial on this matter. I'm
19 trying to find a way for him to be able to decide to do
20 whatever he thinks is in his best interest.

21 But one of the things he completely continues
22 to overlook, and I hope maybe you can speak to him about
23 it, if you have a good relationship with him, you can
24 help him understand, he has certain very specific
25 charges against him. Those charges contain certain

1 things that have to be proved. If they're proved, he
2 will be found guilty. If he's found guilty of those
3 charges, he will be sentenced, and he needs to be
4 focused on what are the charges, what is the evidence
5 the government's going to produce against me, and do I
6 have a chance of beating those charges at trial. If I
7 do not, I need to consider other alternatives. And
8 every time I see your son, what I worry about is he
9 wants to talk about something other than the charges.
10 He wants to talk about his wife or girlfriend. He wants
11 to talk about his children being taken away from him.
12 He wants to talk about his abusive father. He wants to
13 talk about how other people are lying and engaged in
14 misconduct, and he has to focus on the charges against
15 him because those other things are not going to help
16 him, whether they're true or not. They just don't have
17 any real prospect of helping him. He has to focus on
18 the evidence and evaluate that. I don't know if there
19 was this deal that could get him out earlier, but if he
20 had that kind of a chance, he needs to think about those
21 things carefully if those options are available to him.

22 Again, I only want him to do what's in his
23 best interests. You don't need to respond to me. I
24 hope that you would -- if you have the kind of
25 relationship with him where he will listen to you, that

1 you can sit down and talk to him because these kinds of
2 hearings don't end up helping him.

3 MS. HASKELL: Your Honor, we've had this
4 conversation. The problem is he's not been allowed the
5 document. I have a flash drive that was made personally
6 by me of all of the evidence that came from Attorney
7 Saxe and all of the discovery that my son's not allowed
8 to have.

9 THE COURT: Okay. I'm not understanding that
10 at all. Is the government keeping him from having
11 access to the discovery?

12 MS. HASKELL: No, the jails are. In Strafford
13 he had no problem getting access to what he needed.
14 Attorney Vogelman -- my son was saying stuff. I said
15 I'll try to call Attorney Vogelman. We're greeted with,
16 "Put it in writing," and slam the phone down.

17 THE COURT: Stop, stop, stop. I'm going to
18 leave, I'm going to leave. I can't go through this
19 anymore. We need to take a break.

20 Attorney Vogelman, you will get on a thumb
21 drive every piece of evidence that you have. Can you do
22 that?

23 THE DEFENDANT: I can't have somebody --

24 THE COURT: Stop, stop. I will talk to you
25 when I'm ready. Can you do that, Mr. Vogelman?

1 MR. VOGELMAN: There is a thumb drive existing
2 that has all that.

3 MS. HASKELL: He can't have it.

4 THE COURT: Wait. Do you have a thumb drive
5 that has all the evidence on it?

6 MR. VOGELMAN: I have it and so does his
7 mother.

8 THE COURT: You will contact the jail and say
9 the judge is going to order the jail to make a computer
10 available to him with a thumb drive where he can sit and
11 listen to that. If you won't agree to it, he's going to
12 do this, all right? And I will hold a hearing on it and
13 you're going to have to explain to me how a defendant
14 can be denied access to discovery. Is it your position
15 that you can deny him access to discovery?

16 MR. ABRAMSON: No, your Honor. In fact, I've
17 had -- this issue was raised some time ago and I made a
18 call --

19 THE COURT: If I need to I will make a
20 computer be available and a room available and every
21 document in that case will be available to him and he
22 can go in there during the day -- and where is he now?
23 What jail?

24 MR. VOGELMAN: Middleton.

25 THE COURT: If they don't like it at

1 Middleton, I will make you put him somewhere else, okay?
2 That's going to happen and you're going to take care of
3 it. Do you understand?

4 MR. ABRAMSON: Yes, your Honor. And I did, in
5 fact, have a conversation with the jail and I told
6 them --

7 THE COURT: It's going to be happening today.
8 You and Mr. Vogelman are going to sit down and figure
9 out how this is going to get done. If you need me to
10 order somebody, you tell me. But otherwise I'm going to
11 assume you are going to take care of it with the Marshal
12 Service.

13 He needs to have access to his records. Every
14 defendant has a right to prepare for trial, and if they
15 aren't giving it to him -- now, this could all be a big
16 lie. Maybe it is. You can tell me if it is. But if
17 they aren't giving him access to it, that's got to
18 change.

19 MR. ABRAMSON: Your Honor, this is not a lie.
20 This issue was raised previously. As soon as I found
21 out about it, I made a call to the jail and was told --

22 THE COURT: We can't have our federal
23 prisoners being imprisoned pretrial at facilities where
24 they can't access the discovery that's available to
25 them.

1 MR. ABRAMSON: I understand, your Honor. And
2 during that call I was assured that the flash drive
3 would be permitted to go into the jail so that he could
4 review his documents.

5 THE COURT: Okay. You're personally going to
6 talk to people at the jail and the Marshal Service and
7 you're going to file something with me within seven days
8 making clear to me what you've done to resolve this
9 matter. Okay?

10 MR. ABRAMSON: Yes, your Honor.

11 THE COURT: I'm not blaming you. I'm just
12 saying, look, this is a difficult enough case for me to
13 deal with. I don't need those kind of problems, and the
14 Marshal Service better take care of them. Okay?

15 MR. ABRAMSON: Yes, your Honor.

16 THE COURT: We're going to take a break and
17 I'm going to come back after lunch and I'm going to hear
18 your argument to fire Attorney Vogelman. Okay? Let's
19 come back at 1:15.

20 THE DEFENDANT: Yes, your Honor. I apologize.

21 (Luncheon recess taken.)

22 THE CLERK: This Court is back in session,
23 motion hearing, United States of America versus Jonathon
24 Irish.

25 THE COURT: Mr. Irish, why do you want a new

1 lawyer?

2 THE DEFENDANT: Yes, your Honor. Real quick,
3 I wasn't able to go through the documents I was given at
4 the beginning of this hearing. I didn't have the
5 adequate time. Didn't know if it would interest you at
6 all to inform you that I actually have -- I have
7 knowledge of and it's hard for me to obtain all the
8 physical documentation and physical evidence to support
9 and substantiate my claims. However, I do have evidence
10 which would be part of the hearing -- the motion hearing
11 we had prior to the lunch break regarding to credibility
12 of at least one of the witnesses.

13 THE COURT: Just put it in writing, okay.
14 We've got to move on to the other motion.

15 THE DEFENDANT: Well, your Honor, one of the
16 many issues with Attorney Vogelman, and it's been an
17 issue since the beginning, I left it alone due to
18 Attorney Vogelman's background and his reputation. I
19 wanted to give him a chance. However, your Honor, over
20 time he has proven that he is less than knowledgeable
21 about firearm law and firearm code, which is a very
22 large, substantial portion of this entire case.

23 Mr. Vogelman on our first meeting -- I do not
24 know the date offhand, your Honor. It was in my notes
25 that were taken from me when I was moved from Strafford

1 County to Middleton due to assault against myself that I
2 was the victim of. I was not allowed to bring any of my
3 legal material with me down there.

4 However, your Honor, during our first meeting
5 Attorney Vogelman looked at me and told me that, well,
6 Mr. Irish I didn't know that it was a crime to smoke pot
7 and own guns, quote, unquote. Which is concerning, your
8 Honor, because marijuana is a controlled substance. How
9 could a defense attorney not know that it's violation of
10 at least federal law to do so without a prescription or
11 such. In the state of New Hampshire there is no --

12 THE COURT: I've got to be honest with you.
13 I've been a federal judge for 22 years. I didn't know
14 that either. They almost never bring this charge. It's
15 a really unusual charge.

16 THE DEFENDANT: I understand that, your Honor.
17 From my research I found that out as well. Now, that's
18 one of the reasons I left it on thinking, you know what?
19 Maybe it is one of those very rare blue charges that
20 doesn't come across very often.

21 So then Attorney Vogelman had called me and
22 told me he was coming up for another meeting a couple
23 weeks later. We were speaking about Count 4, engaging
24 in the business of dealing firearms, which has since
25 been dismissed. However, when we were discussing it, he

1 tells me, he says, well, we've got a problem because,
2 you know, even if it was a private sale of your
3 collection, which you're saying, Mr. Irish, a person can
4 only legally sell one or two -- maybe two firearms in
5 their entire lifetime without engaging in the business
6 of dealing firearms without a federal firearms license.

7 And I proceeded to show him the ATF laws and
8 regulations, including what is directly on the back
9 portion of the 4473 background check form showing him
10 that he was, in fact, wrong. That a person could
11 legally as a hobby buy and sell firearms as well as --

12 THE COURT: That doesn't really matter to the
13 current charges against you.

14 THE DEFENDANT: No, I understand, your Honor.
15 That's just background on it.

16 Now, there have been issues -- you want to
17 speak about the current charges, all right, your Honor.
18 For example, since the beginning with Attorney Saxe,
19 Attorney Saxe said, oh, I've contacted Brett Newkirk, my
20 former public defender from New Hampshire for the county
21 case, the state case, which was dismissed, and I had
22 given him a document for safekeeping. Now, this
23 document is a subpoena to testify before the grand jury,
24 which is also a subpoena for any and all electronic
25 devices in my possession upon the time of my arrest.

1 These are signed and dated by Magistrate --
2 I'm not sure what magistrate it was, your Honor.
3 However, it was signed and dated 11/4/2013, 4 November,
4 2013, which was a Monday. Well, I have actually a copy
5 here if you would like, your Honor, for you. I actually
6 feel rather more comfortable maintaining the original in
7 my possession.

8 THE COURT: I'm not taking any originals from
9 you of anything.

10 THE DEFENDANT: Now, let me back up for a
11 moment. The reason this is so pertinent, the government
12 is mentioning the alleged text -- the text messages that
13 I allegedly sent regarding marijuana. Now, how they
14 came about those text messages is by obtaining my
15 cellphone.

16 Now, your Honor, interestingly enough, again,
17 if you look at the date where it was signed, 11/4/2013,
18 4 November, 2013, again, a Monday, of last year, on the
19 bottom you will see where it's written in handwriting
20 11/3/13, phone released, with the initials SC, circled,
21 Stephen Church, which would be the superintendent of
22 Rockingham County correctional facility.

23 THE COURT: What are you getting at?

24 THE DEFENDANT: This is a rather important
25 document whereas it clearly shows that my cellphone was

1 released to the federal government, illegally obtained
2 by them and --

3 THE COURT: I'm not understanding what you're
4 saying at all.

5 THE DEFENDANT: Correct me if I'm wrong. The
6 date that the --

7 THE COURT: I don't know what this is, but I
8 don't know why it's important. I'm asking you why it's
9 important.

10 THE DEFENDANT: It's important because it
11 shows that my cellphone was illegally obtained by the
12 government. It may have been only 24 hours.

13 THE COURT: So you're saying this is a
14 potential basis for a motion to suppress, the government
15 obtained things off of my cellphone.

16 THE DEFENDANT: Yes.

17 THE COURT: Did the government obtain things
18 off of his cellphone?

19 MR. ABRAMSON: Yes, your Honor.

20 THE COURT: And how did you obtain the
21 cellphone?

22 MR. ABRAMSON: Your Honor, I have to admit
23 this case -- I came on to the case much later than the
24 facts underlying the seizure of the cellphone. My
25 understanding is that it was seized during the course of

1 the execution of a state warrant and then later
2 transferred to the custody of the federal government
3 after the complaint in this case.

4 THE COURT: Okay. And your point is you think
5 Attorney Vogelman should have filed a motion to suppress
6 the results of that cellphone search?

7 THE DEFENDANT: Well, yes, your Honor, but the
8 thing is that I had to obtain this on my own with the
9 assistance of my wife and my mother because Attorney
10 Vogelman refused to make contact saying that this was
11 not an important document. It had no bearing, it had no
12 weight, it was not important. So I had my wife make
13 contact with the office and obtained the original.

14 THE COURT: I can't even understand this. I'm
15 not -- I don't know how I can rule in your favor. I
16 don't understand. What information did you obtain from
17 his cellphone?

18 MR. ABRAMSON: Your Honor, the only
19 information from the cellphone that's really relevant to
20 this case are probably several dozen text messages sent
21 from the defendant to other individuals in which the
22 defendant talks about using marijuana and purchasing
23 marijuana. It supports the 922(g)(3) charges.

24 THE COURT: And you want to admit the text
25 messages?

1 MR. ABRAMSON: That's correct.

2 THE COURT: And you obtained them by searching
3 the cellphone?

4 MR. ABRAMSON: That's correct.

5 THE COURT: Did you have a search then
6 pursuant to a warrant or did you have some other theory
7 by which you acquired the cellphone?

8 MR. ABRAMSON: Yes, your Honor, I believe
9 there was a federal warrant pursuant to which the
10 contents of the cellphone were seized and searched.

14 THE DEFENDANT: First of all, I was never --
15 this is the only document I was ever --

16 THE COURT: I don't know what this is and it
17 doesn't matter. Okay? What I want to know is, do you
18 argue -- do you agree that they searched the cellphone
19 pursuant to a warrant?

20 THE DEFENDANT: No, I do not, your Honor.

24 MR. VOGELMAN: Yes, your Honor. I think what
25 Mr. Irish is claiming is that you needed a warrant to

1 physically turn the cellphone over rather than --

2 THE COURT: From who to who?

3 MR. VOGELMAN: Over to the federal government
4 from the state authorities, who originally seized it, as
5 opposed to needing a warrant to get into the content of
6 it. The phone was seized legally by the state
7 government. It was then turned over --

8 THE COURT: Was it seized at the time of his
9 arrest?

10 MR. VOGELMAN: Yes. I think it was seized
11 pursuant to a search warrant of his home after his
12 arrest.

13 MR. ABRAMSON: I think that's correct.

14 MR. VOGELMAN: And the law is clear now, the
15 Supreme Court said that to get into the cellphone you
16 need a warrant. And my investigation indicated that
17 although they had the cellphone, they never looked at
18 the contents until they got a federal warrant. So I
19 didn't see a basis for a motion to suppress.

20 THE DEFENDANT: Excuse me, your Honor.

21 THE COURT: Your point is what? That in order
22 for the federal government to obtain custody of the
23 cellphone from the state government, they should have
24 obtained a warrant?

25 THE DEFENDANT: Yes, your Honor. The state

1 government did not have possession of my cellphone. The
2 county jail did.

3 THE COURT: Where did they get it from?

4 THE DEFENDANT: The county jail had possession
5 of my cellphone.

6 THE COURT: That's the state government.

7 THE DEFENDANT: It had nothing to do with the
8 investigation. It was being held in safekeeping with my
9 property.

10 THE COURT: Okay. So what you say happened is
11 they never seized my cellphone from me. When I went to
12 the jail, the jail took custody of all the things I had
13 in my possession when I was arrested. Is that what
14 happened?

15 THE DEFENDANT: Yes, your Honor. What
16 happens, when you go in -- at least Rockingham County
17 and in Strafford County, when you are brought in and
18 booked, brought into intake, they take your possessions,
19 any jewelry other than religious items or wedding bands.
20 They take cellphones --

21 THE COURT: Well, I can't even respond to this
22 because the lawyers don't really know -- you have a
23 completely different statement about what happened with
24 the cellphone.

25 MR. ABRAMSON: Your Honor, the facts --

1 THE COURT: You're going to have to find out
2 exactly what happened. I don't know whether Attorney
3 Vogelman is not doing his job until I know what happened
4 with the cellphone. If indeed there was never any
5 seizure of the cellphone from him, although a seizure by
6 the county would be a seizure that's justified without a
7 warrant, and when -- if what you're saying happened is
8 you were arrested, you had it on your possession when
9 you were arrested, you were brought to the jail, and the
10 things that were in your possession were inventoried and
11 taken by the jail, it's hard for me to see that
12 happening because you're booked at a police station.
13 They don't let you keep your cellphone. But if you
14 think that's what happened -- usually when the prison
15 has something it's because you surrender it to the
16 prison and they inventory what you have at the time of
17 your surrender. You didn't surrender to the prison.

18 THE DEFENDANT: No. What happened, your
19 Honor -- this was part of bail that I wasn't allowed to
20 get to. I was contacted by the local police chief and
21 informed that there would be a warrant for my arrest,
22 and I asked him if I should be prepared to surrender my
23 weapons to him. He said not at this point. Where are
24 you going to be? I said, well, I don't know where
25 Cheyenne is. I don't know where Stephanie is. He said

1 maybe you should go to the courthouse.

2 THE COURT: You've got long, long stories that
3 don't have any relevance to me. I'm sorry, I can't let
4 you go on forever. Were you arrested by the police or
5 did you surrender yourself to the jail?

6 THE DEFENDANT: I was at the courthouse. I
7 went to the courthouse in a form of surrender being
8 informed that there would be a warrant for my arrest.
9 Deputy sheriffs came up and took custody of me
10 temporarily and then brought me to the county jail.

11 THE COURT: And they let you have your
12 cellphone with you while you were in their custody?
13 They didn't take it from you?

14 THE DEFENDANT: They took it and then returned
15 it to my custody at the jail.

16 THE COURT: They gave you your phone back at
17 the jail?

18 THE DEFENDANT: Yes, your Honor. Because what
19 they do is they have you sign documents of what items
20 were taken from you -- sorry, not taken from you, but
21 what items were in your possession that are being held
22 in safekeeping in your property bag along with your
23 clothes that you have.

24 THE COURT: Okay. I have no idea whether
25 Attorney Vogelman has been negligent or not in not

1 addressing this issue. So you're just going to have to
2 -- I want the government to figure out -- you've got to
3 be able to tell me what happened to the evidence that
4 you're relying on. I mean, you're relying on evidence
5 of these text messages and you don't even know how you
6 got them?

7 MR. ABRAMSON: I understand, your Honor. I do
8 know that the cellphone was seized during the course of
9 the state execution of the warrant and bringing him to
10 the facility, and after that I'm happy to look back
11 through the record and determine that.

12 THE COURT: Okay. And your position is there
13 was a seizure of the cellphone within the meaning of the
14 Fourth Amendment. You're not certain today whether it
15 occurred by the police at the time they arrested him or
16 at the jail. But in either event, it was seized from
17 him by county government officials, who are agents of
18 the state. It was then maintained by the state, and you
19 argue that that was pursuant to a warrantless seizure,
20 either a search incident -- result of a search incident
21 to arrest or an inventory search of items taken into
22 custody at the time he's being in prison. Right?

23 MR. ABRAMSON: Correct.

24 THE COURT: And therefore you say either of
25 those was lawful. Right?

1 MR. ABRAMSON: Correct.

2 THE COURT: And then you say the federal
3 government asked for the cellphone, and the cellphone
4 was transferred from the county government to the
5 federal government.

6 MR. ABRAMSON: I believe that's correct.

7 THE COURT: Was that pursuant to a subpoena?
8 I don't even know what the subpoena thing is that he's
9 talking about.

10 MR. ABRAMSON: Yeah. I'm not a hundred
11 percent on the underlying facts of how our office
12 obtained the phone because I was not on the case at that
13 time, but my understanding is that it was transferred to
14 federal custody pursuant to a request by the FBI and
15 some motion was filed with the state court allowing the
16 transfer of that to the federal government.

17 THE COURT: Okay. So if that's so, then that
18 seems like that's perfectly lawful, and then there was
19 no search of the contents of the phone until a warrant
20 was obtained.

21 MR. ABRAMSON: I believe that's correct.

22 THE COURT: And a magistrate of this court
23 granted a search warrant to search it?

24 MR. ABRAMSON: I believe that's correct.

25 THE COURT: Okay. Do you think that's wrong?

1 THE DEFENDANT: I've never been given a copy
2 of a warrant. I've never seen a copy of a warrant.

3 THE COURT: All right. I can't say --

4 THE DEFENDANT: I understand, your Honor.

5 Also, if it was in state custody as evidence or county
6 custody, it would have been in the custody of either the
7 Brentwood Police Department or Rockingham County
8 Sheriff's Department. This subpoena, on the top you
9 will see it's to Rockingham County Department of
10 Corrections, attention Steve Church, who's the
11 superintendent of the facility, because --

12 THE COURT: Did you issue this subpoena? What
13 is this thing? I don't know what he's talking about.

14 MR. ABRAMSON: I'm not sure, your Honor.

15 THE COURT: Give it to him.

16 THE DEFENDANT: I apologize for frustrating
17 you, your Honor.

18 THE COURT: Look, we're just completely and
19 utterly wasting time here.

20 (Pause.)

21 MR. ABRAMSON: Yes, your Honor, it does appear
22 to be a grand jury subpoena for the cellphone to be
23 released to federal custody.

24 THE COURT: All right. And you think that's
25 maybe how it got into the FBI is when it was produced to

1 the grand jury?

2 MR. ABRAMSON: Yes, that's possible, your
3 Honor.

4 THE COURT: Why didn't they just get a warrant
5 to seize the cellphone and search its contents? If they
6 were going to get a warrant to search its contents, why
7 are they doing it pursuant to a grand jury subpoena?

8 MR. ABRAMSON: I would have to look back at
9 the facts as how the phone initially came into our
10 custody, your Honor.

11 THE COURT: But in any event, nothing that
12 I've seen suggests that anything wrong was done. I
13 don't know what was done, but nothing that's been
14 described so far suggests anything wrong was done.

15 THE DEFENDANT: They took possession of the
16 cellphone before the subpoena was authorized. Before
17 the seizure subpoena was authorized, the FBI took
18 possession of the phone.

19 THE COURT: Doesn't sound wrong to me. It
20 doesn't suggest that Attorney Vogelman did anything
21 wrong.

22 THE DEFENDANT: Well, on top of that, your
23 Honor, I have attempted to -- while I was in New York, I
24 attempted to contact him multiple times, especially
25 after a situation where an inmate had attempted to

1 sexually assault me. Attorney Vogelman refused to speak
2 to me, refused to contact the facility. I attempted to
3 email him. He replied to one email, your Honor, and
4 that was in the beginning of my stay out at Manhattan,
5 MCC or MDC, the facility where I had the evaluation. He
6 refused to contact me. He told my wife that he would
7 meet with me as soon as I was placed at whatever
8 facility I was placed at whenever I came back to the
9 district. He refused to make contact with me, refused
10 to speak to me.

11 THE COURT: All right. Attorney Vogelman, I
12 want you to keep a log of every communication you have
13 with your client and every time he attempts to contact
14 your office. So your secretary should be instructed, if
15 you receive any communications from him, make a note of
16 every communication you've had because it appears you're
17 going to be accused of not communicating with him, and I
18 need you to keep an absolute record of this.

19 You don't have to take every single call he
20 has, but you do have to communicate with him on a
21 regular basis, and we need to have a record of exactly
22 what attempts are made to contact you, when you do
23 contact him. So you need to keep very detailed records
24 of all of this.

25 MR. VOGELMAN: I have those records for my

1 contacts with him. It's on my time sheets which are
2 always reflected on my CJA vouchers. Otherwise --
3 there's an issue here, Judge, and maybe I can head this
4 off. Both from Mr. Irish and his family, I was getting
5 eight to ten phone calls a week. None of them had
6 anything to do with this case. The calls --

7 THE COURT: Just like everything I've been
8 hearing today, almost nothing has any relevance to what
9 we're dealing with.

10 MR. VOGELMAN: I told Mr. Irish and I told his
11 fiancee that unless it's an emergency, call me -- they
12 were calling me at home, on weekends, on my cellphone.
13 Mr. Irish would call her. She would then forward it to
14 me, and I said, unless it's an emergency, you can call
15 once a week.

16 Then when I had my operation, I said please
17 don't leave messages on my machine, please don't speak
18 to my secretary, put it in writing. There's no way I
19 can keep track of the messages I'm getting, and his
20 response and his family's response was to call my
21 receptionist a bimbo, a bitch, and other words worse
22 than that, screaming and yelling at every -- at my
23 paralegal. And I have a rule in my office. You yell at
24 a member of my staff, you can no longer call. You have
25 to put it in writing. And I informed him and his family

1 that unless it was an emergency, he had to put it in
2 writing. And that's still going to be my practice,
3 because if you call my secretary a cunt and a bitch and
4 a bimbo, you lose the right to call my office.

5 THE COURT: Well, you're not allowed to speak
6 to them in that tone, use those words.

7 THE DEFENDANT: I didn't, your Honor.

8 THE COURT: Stop. You're going to be allowed
9 to call your lawyer twice a week. You're going to
10 schedule times, twice-a-week phone calls, and you're
11 going to talk to the defendant for up to an hour twice a
12 week and listen to whatever he has to say. Beyond that
13 you can't call your lawyer more than twice a week.

14 Anything else has to be communicated in writing. Okay?

15 MR. VOGELMAN: It's not okay with me, Judge.
16 It's an illegal order.

17 THE COURT: Well, I'm ordering you to. You're
18 going to take those calls. You're going to talk to him
19 twice a week for up to an hour. You're going to listen
20 to what he has to say. I'm ordering you to do that.
21 Why do you say that's an illegal order?

22 MR. VOGELMAN: Because I've been threatened
23 twice with a PCC complaint and --

24 THE COURT: What do you want me to do? Just
25 because it's difficult for you, I need to appoint a new

1 lawyer that will do the same thing for him? You knew
2 what you were getting into when you accepted this
3 assignment. You knew very well what you were getting
4 into.

5 MR. VOGELMAN: I didn't expect him to abuse my
6 staff, Judge.

7 THE COURT: So he will then abuse another
8 person's staff.

9 MR. VOGELMAN: That's not my problem.

10 THE COURT: It is your problem. You're an
11 officer of the court. You're working for me here.

12 MR. VOGELMAN: I understand that, Judge.

13 THE COURT: So it is your problem. It's not
14 acceptable. You will -- you can record his
15 conversation. If he makes those kind of communications,
16 you can bring them to the Court's attention. You will
17 talk to him twice a week, no more than twice a week. He
18 will communicate anything else he has to communicate
19 with you in writing.

20 If you abuse staff, there's going to be a
21 recording made of it, and it's going to be brought to my
22 attention and you're going to be disciplined. Do not
23 say one nasty thing to any of his staff. Do you
24 understand me?

25 THE DEFENDANT: Yes, your Honor. I understand

1 that and I have not.

2 THE COURT: I can't believe he's lying to me
3 about this.

4 THE DEFENDANT: Your Honor, I understand,
5 however, there's testimony as far as the fact that he's
6 referred to an alleged law student who is assisting with
7 my case supposedly and works with him in his office.
8 However, his partner has no idea on who this individual
9 is.

10 THE COURT: I don't care. I am not going to
11 take this from either of you. Mr. Vogelman, you are an
12 officer of the court. You can't simply refuse to do
13 things that I instruct you to do.

14 MR. VOGELMAN: You didn't instruct me until
15 today, Judge.

16 THE COURT: Well, I'm instructing you now, and
17 to tell me it's not my problem, Judge, I don't care
18 about that. This is a difficult case and I don't want
19 to be involved with it anymore. Well, you're an officer
20 of the court.

21 MR. VOGELMAN: That's not what I said. I said
22 it's not my problem if he abuses other people. That's
23 all I said. I didn't say this wasn't my problem.

24 THE COURT: Well, you're not going to get out
25 of the case just because he's difficult to work with.

1 I'm sorry. I'm not letting you out just because he's
2 difficult to work with.

3 MR. VOGELMAN: I don't think difficult is the
4 operative word, Judge.

5 THE COURT: So it will be just as difficult
6 for anybody else. What do I do? I deny him the right
7 to a lawyer and force him to go -- what will happen if I
8 do that, if I deny him counsel?

9 THE DEFENDANT: Motion to dismiss based on
10 violation of defendant's Sixth Amendment rights. The
11 motion's right here ready to go, your Honor. I have a
12 copy for the Court, for the prosecution, as well as for
13 me.

14 THE COURT: Good.

15 MR. VOGELMAN: I'm happy to do it, Judge.

16 THE DEFENDANT: Too late.

17 THE COURT: You'll do what you have to do.

18 THE DEFENDANT: He's been ineffective counsel,
19 your Honor, and the information is in the motion. I
20 would please request that the Court review the motion
21 and hold a hearing on the matter.

22 THE COURT: I'm denying the motion that you
23 filed to replace him as your attorney. Are you filing a
24 new motion?

25 THE DEFENDANT: Yes, your Honor, I am.

1 THE COURT: You need to submit it to counsel
2 and counsel will review it and determine whether it
3 should be filed.

4 THE DEFENDANT: I'm filing this pro se, your
5 Honor, because it's an ineffective counsel motion.

6 THE COURT: You can't file it pro se. You
7 have to give it to your lawyer. He will determine
8 whether it will be filed on your behalf.

9 THE DEFENDANT: Just like he refused to file
10 the motion to dismiss based on outrageous misconduct by
11 the government, even though he sent me a letter saying
12 he would do it. He refused to file the motion for that
13 dismissal, your Honor, after I told him I refused to
14 take the plea bargain. He has been increasingly
15 argumentative and increasingly --

16 THE COURT: I can understand why given the way
17 you behaved here in this proceeding today. You're an
18 extraordinarily difficult person to deal with. I would
19 not want to be representing you because -- stop
20 interrupting me, please. You're an extremely difficult
21 person to work with. I've been trying very hard to
22 listen to you, to accommodate you, to help you do what's
23 in your interest, and I know that you are an
24 extraordinarily difficult person to deal with.

25 What he's described here is intolerable. You

1 cannot disparage his staff, call them names. He says
2 you did that. You say you didn't. I believe him. I
3 don't believe you. I don't believe he would make that
4 up. Okay?

5 THE DEFENDANT: Well, your Honor, I understand
6 that, your Honor. I understand because he is an officer
7 of the court.

8 THE COURT: And I believe that in large part
9 because you are an extremely volatile person who is
10 constantly doing things. Even in court when you are
11 trying to maintain your composure, you're not able to do
12 it. You're oftentimes crying, you're oftentimes
13 interrupting, you're oftentimes shouting out your
14 answers. You are an extremely emotionally, volatile
15 person.

16 And so his statement that you've been saying
17 these things to his staff when you don't get what you
18 want rings true with me. That's what -- your behavior
19 suggests that that is, in fact, how you are behaving.

20 So I believe him rather than you, and I'm
21 instructing you don't do it again, and it is an order of
22 the Court that you may not attack his staff. You may
23 not call them names. You may not scream and yell at
24 them. We're going to schedule two a week phone calls
25 with him and you're going to speak to him at those

1 times, and you're not otherwise to try to contact him,
2 unless it's an emergency. You're otherwise to
3 communicate with him in writing. That is sufficient.
4 Two hours a week of listening to you talk about whatever
5 you want to talk about is sufficient for him to be able
6 to do his job.

7 THE DEFENDANT: Am I supposed to pay for these
8 telephone calls, your Honor, or is he supposed to pay
9 for them? Because he refuses to put money on the
10 collect account so that I can talk to him.

11 MR. VOGELMAN: He's on the account, sir.

12 THE DEFENDANT: Your Honor, it says there's no
13 money on the account and that payment must be made.

14 THE COURT: All right. Put him on the account
15 if he isn't already so he can have the call done.

16 MR. VOGELMAN: As I told the Court, I made the
17 determination that that motion would be frivolous, and
18 that's what I put in the letter and that's why the
19 motion wasn't filed. I did the research. I saw no
20 basis for a dismissal because of outrageous government
21 misconduct.

22 THE COURT: Okay. That's his position. He
23 believes your motion is frivolous.

24 THE DEFENDANT: Well, your Honor, it seems as
25 if he already came to that conclusion before he even got

1 any of the information, obviously.

2 THE COURT: All right. You file your motion.
3 I will allow you to file that motion pro se. You object
4 to that motion. When the objection is in, I will rule
5 on it on its merits. Okay? So that motion will be
6 filed and resolved on the papers. All right?

7 THE DEFENDANT: Thank you very much, your
8 Honor.

9 And if it would please the Court, just for
10 information purposes, Agent Christiana -- and testimony
11 of this can be given by my mother as well. Agent
12 Christiana stayed at her campground on her property
13 under a fake name this past summer. Nobody knows why,
14 but he did it.

15 THE COURT: That's a very good example of the
16 problem that you're having. You're not focusing on the
17 charges that are pending against you and that if you're
18 convicted of will result in incarceration. You need to
19 try to focus on getting your freedom back. That's what
20 you need to do. And these other things about whether --
21 you don't like Agent Christiana. You think he's doing
22 bad things. When this case is resolved, if you think
23 he's violating your constitutional rights, you can
24 pursue a lawsuit against him.

25 But this issue -- your freedom is at stake

1 here. I don't want to see you jailed one day longer
2 than you need to be, but if you are unable to focus on
3 the issues that are relevant to your continued
4 incarceration, it's going to result in bad things for
5 you.

6 THE DEFENDANT: I understand, your Honor, and
7 you're right, the remaining counts, Counts 1, 2, and
8 5 -- first of all, the grand jury testimony of my wife
9 was led as well as she was asked to lie on the stand.
10 That's neither here nor there -- and I don't like to
11 assume things, but I'm going to assume that I'm not
12 going to be allowed to elaborate on that any further.
13 As far as the witnesses go, they claim I'm an alleged
14 threat to the witnesses. Your Honor, I want these
15 people to get on the stand and say the same things that
16 they said in their FBI interviews because, your Honor,
17 they will be the ones committing perjury and it will not
18 look good on the government. The government's case is
19 equal to that of a submarine with a screen door, your
20 Honor. It's nowhere near airtight.

21 THE COURT: Well, that's a fancy, fun way of
22 talking about it, but the problem is they have you on
23 tape, according to the government, acknowledging that
24 you -- facts that make the false statement claim against
25 you. They have you on tape making statements about the

1 receiver that will implicate you in the crime. You
2 can't simply ignore -- you can't pretend like the
3 evidence against you doesn't exist.

4 THE DEFENDANT: I'm not pretending that the
5 evidence doesn't exist, your Honor. There is no
6 evidence of me being on tape speaking about a lower
7 receiver claim, not at all.

8 THE COURT: I'm sorry, I misunderstood
9 something that you were saying about the receiver.

10 MR. ABRAMSON: No, your Honor, there are
11 recorded statements in which the defendant tells a
12 cooperating witness that he has purchased the lower
13 receiver and he has put all of his own money into the
14 receiver for the subsequent -- which will end up being
15 for the subsequent resale of the completed gun to an
16 undercover officer.

17 THE DEFENDANT: Your Honor, so here we are
18 talking about two counts right now, two separate counts.
19 We are discussing the facts of what the government is
20 claiming as facts and supposed evidence of. The lower
21 receiver they're claiming that I put my money into for
22 the subsequent sale, that would be the lower receiver
23 I'm being accused of telling my wife to purchase for
24 Count 1, the aiding and abetting false statement in
25 connection to acquisition of a firearm.

1 THE COURT: I've got to try a case. When is
2 the trial set in this case?

3 MR. ABRAMSON: It's scheduled for
4 December 2nd.

5 THE COURT: All right. We'll try the case on
6 December 2nd and we'll see what happens.

7 You both need to understand something. You
8 are both officers of the court. I recognize this
9 defendant is extraordinarily difficult to deal with. He
10 is competent to stand trial, but he suffers from
11 significant mental illness. He acknowledges that
12 himself. He suffers from PTSD, among other things. He
13 has significant mental illness. He's an extraordinarily
14 difficult person to deal with. He's not focusing on the
15 charges against him to his detriment. That must be
16 extremely frustrating to you, counsel, as his lawyer. I
17 know you want the best for him and it's very hard to
18 work with somebody that won't see the world as it is as
19 he appears to be. That's very frustrating. I know that
20 you think he's a dangerous person, a criminal, a bad
21 person. He should get punished for what he did. But he
22 has constitutional rights. He has a right to have
23 access to the evidence that the government has against
24 him to the extent it's been produced to his lawyer. He
25 has a right to that, and you have to ensure that he

1 receives that right.

2 He has a right to counsel. Difficult
3 defendants have a constitutional right to counsel. Just
4 because they're pains in the neck to deal with doesn't
5 mean they don't have the right to an attorney, and you
6 have to fulfill that right. Just because they're
7 threatening you with professional misconduct, that's
8 routine. You know that. How many times has a client
9 threatened you that they will refer you to the
10 Professional Conduct Committee? That happens all the
11 time in my courtroom. That should be unsurprising to
12 you.

13 Now, I understand, you have to protect your
14 staff and I support that and I will support you in it,
15 and I have just issued an order to the defendant that
16 he's not to be permitted to engage in that kind of
17 conduct, and you can police it by recording his
18 communications, if necessary, to ensure that.

19 But even as a difficult person, he has a right
20 to have an attorney. And you say it's not your problem
21 what happens to other attorneys, but it would just be
22 repeated. I know given your experience and your
23 background, if you can't work with him, I don't know who
24 can. And the next person will have the exact same
25 problem. And the only answer to this I know is to get

1 this case to trial and to get it resolved. He's
2 entitled to his day in court and I want to give him his
3 day in court.

4 I want him to have all the discovery to which
5 he's entitled. I want him to have the assistance of
6 skilled counsel. He doesn't have to like the attorney.
7 He doesn't have to agree with what the attorney does on
8 his behalf. He's not entitled to 24/7 communication
9 with his attorney, but he's entitled to reasonable
10 communication with his attorney.

11 Two hours a week is more than sufficient
12 communication in a case which at this point has become a
13 rather simple case. In the earlier phases this case was
14 unnecessarily complex based on charging decisions that
15 the government made that I don't think were wise to
16 begin with, but what you've done now is you've
17 simplified the case very dramatically. So the case is
18 you bring in an agent who says I talked to the defendant
19 and this is what he said to me. And then you put on
20 your evidence as to why what he said to the agent was
21 not true and can justify an inference that it was
22 knowingly untrue.

23 You put on your gun charge and you put on the
24 evidence to show that it was a straw purchase. He can
25 call his -- are you married to her now? I can't

1 remember.

2 THE DEFENDANT: Common law wife, your Honor.

3 THE COURT: -- common law wife to testify and
4 she can say I bought it and, you know, whatever
5 explanation they have about how he ended up with the gun
6 that she bought. You know, that's fine. That's a great
7 two or three-day trial and, you know, if he has some
8 defense, he can try to put it on. But we're not going
9 to be getting into what happened in a child custody
10 battle and how his father abused him and how the agents
11 are staying at his campground. Those are not issues
12 that concern this case at all.

13 THE DEFENDANT: Your Honor, if I may, the
14 issue with my father is going to have a slight bearing
15 at least on Count 2 specifically because, your Honor,
16 Agent Christiana that day, the first thing he said to me
17 was I need to talk to you about your father. And he
18 starts singing the praises to the Lord about the great
19 person my father was. And that's where that
20 conversation started and that's what that conversation
21 was about.

22 THE COURT: To the extent you can introduce
23 evidence as to what the conversation was, that reference
24 can come in, but we're not going to have a trial about
25 whether your father was an abuser of you. We're not

1 going to have a trial about whether your children were
2 wrongly taken from you. We're not going to have a trial
3 about whether you threaten your common law wife or you
4 don't. We're going to have a trial about did you make a
5 false statement to a law enforcement officer that
6 qualifies as a crime under federal law. We're going to
7 have a trial about did you -- what's the straw purchase
8 charge?

9 MR. ABRAMSON: Aiding and abetting.

10 THE COURT: The aiding and abetting charge.
11 Did you aid and abet in a straw purchase, and we're
12 going to have a trial about are you a marijuana user who
13 has possession of firearms.

14 THE DEFENDANT: Is the government going to be
15 allowed -- let me rephrase, back up. The assented to
16 motion to dismiss Counts 3 and 4 -- and you're going to
17 look at me like I'm crazy, your Honor. I told Attorney
18 Vogelman I objected to dismissing those two counts.
19 Because, your Honor, Count 4, I can prove beyond a
20 shadow of a doubt entrapment. Count 3, I can prove that
21 the government's informant, my former boss at the
22 firearms store, lied to federal authorities and misled
23 the investigation.

24 THE COURT: You don't have a right to have
25 charges brought against you. There's no constitutional

1 right to be indicted or to be tried on charges, and the
2 government has substantial discretion to dismiss charges
3 that it brings. The government can even move to dismiss
4 charges after a conviction, and the judge has very
5 limited power to stop the government from dismissing
6 charges that it brings. So I don't have any real power
7 to stop them under these circumstances.

8 THE DEFENDANT: No, I understand that, your
9 Honor. I'm just voicing my opinion that I wanted those
10 to go to trial so that I could prove --

11 THE COURT: I understand, you want trials on
12 things that are irrelevant to the issues in front of
13 you. That's the number one problem that you're not
14 seeing and why I am concerned about you is that you want
15 to be involved with everything other than what the
16 actual charges are against you, and it's going to end up
17 being a very bad result for you because you're not able
18 to focus on what it is that are the three charges that
19 you're going to have to face. And if you focus on
20 those -- and this may be overly technical for you, but
21 when the government brings a charge, there are certain
22 things that the government has to prove with respect to
23 the charge.

24 THE DEFENDANT: Elements of the case, yes,
25 your Honor.

1 THE COURT: Elements of the case. And your
2 lawyer can tell you, for each of those charges, the
3 elements are 1, 2, 3, and 4. If they prove 1, 2, 3, and
4 beyond a reasonable doubt, you get found guilty unless
5 there's some kind of affirmative defense. And that's
6 what you should be focused on. Everything that you want
7 to do, you should be trying to figure out how does that
8 relate to my defense.

9 THE DEFENDANT: Yes, your Honor. I was just
10 mentioning that for informational purposes because those
11 are the two biggest charges where it was blatantly
12 obvious right in front of everyone that the government
13 was doing things they weren't supposed to do and they
14 set me up, in layman's terms.

15 THE COURT: But entrapment as you've
16 learned -- I'm sure your research and discussion with
17 lawyers -- is not as simple as does the government set
18 me up. The government sets up people all the time for
19 crimes and they get convicted of them. The entrapment
20 defense is a very narrow defense that -- it doesn't look
21 like that is available to you with respect to these
22 charges.

23 THE DEFENDANT: These three charges, no, your
24 Honor, not these three charges. No, I apologize --

25 THE COURT: So you won the victory on the ones

1 that are dismissed. Let's focus on the ones that are
2 still in front of you. I want to remind you, you do
3 have constitutional remedies. If the government does
4 bad things to you, you can bring a civil suit against
5 them at some later time. You might be able to bring a
6 Federal Tort Claims Act claim against them, some kind of
7 Bivens claim against them. I don't know. But they
8 aren't going to help you with your defense to these
9 criminal charges.

10 THE DEFENDANT: Your Honor, the only reason I
11 brought that up is for informational purposes as well as
12 the fact -- they dismissed Count 4, however, they're
13 still bringing up not just elements of Count 4 but
14 specific parts of Count 4 which were the reason Count 4
15 was brought ahead, which was one of the firearms sales,
16 and they're bringing it as part of Count 1. So Count 1
17 is part, directly sliced, half of Count 4. So therefore
18 Count 4 is gone. Either they have got to wipe out Count
19 1 or they have got to figure something else out, because
20 discussing Count 1, they're clearly saying how Count 1
21 and Count 4 are one and the same.

22 MR. VOGELMAN: Judge, I can articulate because
23 he discussed this with me and I told him I disagree with
24 him. His claim is that once you dismiss the two counts,
25 the counts that are left are fruit of the poisonous tree

1 and must be dismissed as well. In my legal opinion, I
2 told him I didn't believe that was true.

3 THE DEFENDANT: No, I misspoke on that, your
4 Honor, and I apologize. I'm actually --

5 MR. VOGELMAN: While he's looking, Judge, will
6 a personal visit to the jail equal one of those phone
7 calls?

8 THE COURT: Yes. You will either visit with
9 him or speak to him twice a week at a regularly
10 scheduled time. Other communications need to be in
11 writing unless it's an emergency. If his mother wants
12 to contact you, she should do so in writing. That's the
13 way it goes. The defendant does not have a
14 constitutional right to have his mother talk to his
15 lawyer.

16 THE DEFENDANT: She just has pertinent
17 information about the case, your Honor, as well as my
18 wife.

19 THE COURT: I know, but you can't have the
20 lawyer constantly being bombarded by calls, and I have
21 less control over them than I have over you.

22 THE DEFENDANT: Yes, your Honor. Maybe you
23 will understand how I'm trying to explain this and why
24 I'm explaining it the way I am. This is part of the
25 draft plea bargain they sent.

1 Several months later, on September 21, 2013,
2 the defendant drove his girlfriend, hereafter referred
3 to as ST, to Riley's Sport Shop, Inc., of 1575 Hooksett
4 Road in Hooksett, New Hampshire, which is a federal
5 licensed firearms dealer. The defendant identified a
6 firearm that he wished ST to purchase for him,
7 specifically an assault rifle lower receiver, and upon
8 arriving at Riley's, provided ST with the funds to
9 purchase the firearms, Count 1. While the defendant
10 waited, ST filled out the requisite ATF Form 4473 to
11 purchase the Matrix Aerospace Model MA-15 assault rifle
12 lower receiver with serial number 5560179 on that Form
13 4473. ST stated, at the defendant's request, that she
14 was the actual transferee/buyer of the firearm when in
15 fact the defendant was the actual transferee/buyer of
16 the firearm. While the defendant was not a prohibited
17 person at the time of the purchase -- while the
18 defendant was not a prohibited person --

19 THE COURT: Why are you reading this to me?

20 THE DEFENDANT: Because at the end of it it
21 continues explaining that situation, and then it goes
22 and says: At the conclusion of the transaction, ST paid
23 the money provided to her by the defendant, took
24 possession of the firearm, the lower receiver, and upon
25 exiting Riley's Store immediately handed the lower

1 receiver to the defendant who subsequently incorporated
2 the lower receiver into a complete assault rifle which
3 he had sold approximately two weeks later.

4 Now, that sale, your Honor, was to their
5 undercover agent as sale number three for Count 4 of the
6 indictment which was subsequently dismissed.

7 THE COURT: Right.

8 THE DEFENDANT: So, therefore, this lower
9 receiver would have never come into my possession unless
10 Count 4. So because of Count 4's existence, Count 1
11 exists.

12 THE COURT: Well, it came into your possession
13 because you sent your common law wife in to get it for
14 you and you then used it in a -- putting together a
15 weapon that you sold to someone else.

16 THE DEFENDANT: Because the confidential
17 informant and his supposed customer, the undercover
18 agent, told me we will give you \$1,200 front money for
19 that weapon.

20 THE COURT: Right. But that's not entrapment.
21 You see --

22 THE DEFENDANT: Your Honor, that is the
23 only -- I'm sorry to cut you off. That is the only
24 reason because I had filed in the 4473 for -- my name
25 for my lower receiver is also in the discovery.

1 THE COURT: I think you need to have a trial
2 and the jury will hear everything you have to say and
3 the jury will decide whether you committed these crimes
4 or not. That's what a trial is for.

5 THE DEFENDANT: I agree, your Honor. However,
6 I cannot do it fairly and have effective proper counsel
7 with Attorney Vogelman. I do not feel he's going to do
8 the full amount of defense.

9 THE COURT: No lawyer will do what you want to
10 do because what you want to do is not in the judgment of
11 any lawyer a permissible line of defense for you, and
12 I've told you in the past you can represent yourself or
13 you can have a lawyer, but you can't control what the
14 lawyer does on your behalf.

15 THE DEFENDANT: I don't want any mention of --
16 I'm not trying to use my daughter's situation as a
17 defense, nothing about my -- the issues with my father.
18 I would rather not even think about those because of
19 what they have done to me.

20 THE COURT: What do you want to raise that you
21 don't think Attorney Vogelman will let you raise?

22 THE DEFENDANT: I just don't think he's going
23 to adequately fight for me and defend me. However, your
24 Honor -- and this is why I specifically requested
25 Attorney Evan Nappen.

1 Since I was initially arrested on November 1,
2 2013, I have been in contact with Attorney Evan Nappen
3 on this matter, and because I was unable to come up with
4 the \$50,000 required to obtain him, I could not hire
5 him. However, Attorney Evan Nappen is very well
6 informed of this case. Not only does he have knowledge
7 of this case from the beginning and knows that with the
8 proper defense -- and he's told myself and my mother and
9 my wife that Attorney Saxe and Attorney Vogelman can
10 call him at any point in time with any firearms
11 questions because he is one of the top Second Amendment
12 attorneys.

13 THE COURT: Who is this guy? I've never heard
14 of him.

15 THE DEFENDANT: Attorney Evan Nappen.

16 MR. VOGELMAN: He's a New Hampshire lawyer,
17 Judge. I don't know whether he's admitted into this
18 court or not.

19 THE COURT: I never heard of him. Is he a
20 member of our bar? Do you know?

21 THE DEFENDANT: N-A-P-P-E-N. I've spoken to
22 his office and Evan is more than willing. He is onboard
23 as long as I can come up with the funds.

24 THE COURT: We can't pay someone \$50,000 to
25 represent you. I'm sorry. You have a right to a court-

1 appointed lawyer who will do what's necessary to defend
2 you, but you don't have a constitutional right to the
3 lawyer of your choice. If you can't hire him -- I'm not
4 even sure he could practice in our court. Is he a
5 member of our bar?

6 THE CLERK: He's a member of our bar.

7 THE COURT: To my knowledge I've never heard
8 of him.

9 THE DEFENDANT: I understand that, your Honor.
10 I understand a defendant, the Sixth Amendment guarantees
11 them a right to counsel. They cannot cherry pick and
12 say, well, I want this one, I want that one. However,
13 I've had issues with two separate attorneys who are not
14 very well versed in firearm law. They do not --

15 THE COURT: You've had two of the most
16 experienced attorneys that we have in our court.
17 Attorney Saxe has been -- probably appeared in more
18 federal criminal trials in this district than all but
19 maybe two or three lawyers in the state. Attorney
20 Vogelman has had a lifetime of practice as a public
21 defender, as a civil rights lawyer, as an experienced
22 member of our bar. He's vastly experienced, vastly more
23 experienced than this other guy who I have never even
24 heard of who you like, and, you know, to say that they
25 don't know what they're doing is just wrong. Both of

1 them are highly, highly experienced.

2 They're challenged in dealing with you because
3 you're so difficult to work with. I understand that.
4 Attorney Saxe, I let you get rid of him even though he's
5 a highly experienced lawyer. But I can't just keep
6 cycling you through lawyers. My judgment is there is no
7 lawyer who I could appoint for you who you could work
8 with because no lawyer who's a member of the bar, who's
9 familiar with his obligations as an officer of the
10 court, will pursue the lines of defenses that you want
11 to pursue because they're not acceptable. They cannot
12 lead to an acquittal. They cannot benefit you. And if
13 you want to pursue those lines yourself and represent
14 yourself, you can, but I can't do anything more for you
15 than that.

16 THE DEFENDANT: No, your Honor, I understand.
17 I'm not bringing up what I'm talking about for a
18 defense. I am not guilty of these charges as they're
19 alleged. The thing is, your Honor, is that -- and I
20 apologize. Attorney Saxe has a reputation as well as
21 Attorney Vogelman, and if this was a drug case or a
22 conspiracy case, I'd hop right on them for
23 representation in a heartbeat. If I wanted a quick and
24 good deal for a plea, I'd take it in a heartbeat.
25 However, for whatever reason, when it comes to firearm

1 code and firearm law specifically, which is what this is
2 about -- let's cut down to it. The government does not
3 want me to possess firearms. That's what this comes
4 down to. And Attorney Evan Nappen specializes in this,
5 in firearm law and firearm stuff.

6 THE COURT: I can't do anything for you. I
7 can't appoint Attorney Evan Nappen to represent you, and
8 I can't write you a check for \$50,000 so you can hire
9 him. There just isn't any basis in the law for me to do
10 that.

11 I think we've covered -- I've gone around and
12 around about as much as I can here.

13 Ma'am, just briefly, did you want to say
14 something?

15 MS. HASKELL: Yes. I just wanted to
16 address -- you said I could write to Attorney Vogelman?

17 THE COURT: Yes.

18 MS. HASKELL: I've done that. He doesn't
19 respond.

20 THE COURT: He doesn't represent you. So he
21 doesn't have to contact you.

22 MS. HASKELL: But I can tell you that I have
23 not been rude to his staff. I am a professional. I own
24 my own business. I have not been rude to his staff, but
25 what I received from his staff, those people would work

1 for me for five minutes. You don't say to somebody,
2 this man's staff speaking for Attorney Vogelman, "Put it
3 in writing," slam goes the phone.

4 THE COURT: I'm not going to get -- this isn't
5 reality TV here, okay? I'm done. I've heard you on it.
6 Thank you. Communicate with the lawyer in writing. I'm
7 not going to get back into adjudicating what was said in
8 your phone calls with Mr. Vogelman. I'm done. I'm
9 done.

10 I made clear my position. I've denied your
11 motion for new counsel. I've instructed Mr. Vogelman as
12 to what his relationship with you is to be like. I've
13 reminded Attorney Vogelman and the government that
14 you're officers of the Court, and it's your duty to help
15 me fulfill this defendant's constitutional rights.
16 Okay? We've got to get him a trial, a fair trial where
17 his constitutional rights are being respected.

18 That's the only way this is going to end. I
19 can't do it. I need you both to do it. And it requires
20 extra effort, and I understand that, and I wouldn't want
21 to be in your positions, but you have to do it. That's
22 what it comes down to, okay? Because I can't do it.

23 I've tried today to listen and try to get the
24 defendant to do what's in his interest, but I can't do
25 it. It's up to you.

1 Do the best you can. I recognize it's not
2 going to be a satisfying experience, but as much as you
3 are frustrated with him, I know, Attorney Vogelman, you
4 value the constitution and you recognize how important
5 it is for this defendant that he get a fair trial with a
6 vigorous advocate working on his behalf, and I am
7 confident that you can do that regardless of these
8 difficulties.

9 If you should encounter disrespectful
10 interactions with him and you need further assistance
11 from the Court, request a hearing, but come forward with
12 evidence as to what he's doing because I will at that
13 point be considering whether to hold him in contempt of
14 court because I've ordered him not to be disrespectful
15 to you and your staff. If he can't do that, then I may
16 further limit his communications with you. If he
17 doesn't communicate with you in a way that can be
18 productive, he may lose the right to communicate with
19 you. All right? We'll deal with it on an incremental
20 basis, but I will not tolerate anyone abusing your staff
21 or you. And he can lose rights that he has, and if he
22 doesn't communicate with you effectively, he may lose
23 those rights. But until then I want you to make every
24 effort to work with him. All right?

25 And I want you to resolve this discovery issue

1 because I can understand the defendant's frustration.
2 If he can't see the evidence against him -- it would
3 seem to me that it would be in your strong interest to
4 actually lay out for him here are the witnesses and
5 exhibits on each of the counts, and this is the
6 evidence -- you've set it out for me very clearly. Set
7 it out for him and give it to him so he can actually
8 look at it.

9 MR. VOGELMAN: Just so it's clear, Judge, he
10 had everything at the beginning. This all happened when
11 they shipped him off to New York and came back. When he
12 was in Strafford County he had the evidence.

13 THE DEFENDANT: What happened, your Honor,
14 after I had been forced into a cell and assaulted, I
15 contacted Attorney Vogelman who subsequently contacted
16 the Marshal Service I believe and had them transfer me.
17 I woke up that morning to the corporal and lieutenant
18 saying, Irish, pack your crap, you're out of here,
19 you're going home.

20 I packed up. My wife was on the phone. She
21 thought I was going home, that everything was done and
22 over with. I said, I don't know. They're probably
23 going to bring me to the courthouse to cut me loose from
24 there. The judge might want to talk to me. I don't
25 know what's going on.

1 This was 5:00 in the morning. I go down to
2 booking. The gentlemen who do the Strafford County
3 transport -- I believe it was these two gentlemen
4 transported me up here, and then I sat until 1330 hours
5 until finally a marshal came and spoke to me, and I said
6 what's going on? I was told I'm going home. He said,
7 oh, no, you're not. You were involved in an
8 altercation. Like I was assaulted. I started
9 explaining. He said, well, you're being transferred to
10 Middleton. And he wouldn't allow me to have my thumb
11 drive, my paperwork discovery, any of it.

12 THE COURT: I don't need to hear this. I've
13 addressed it. I've said you're going to get your
14 discovery. Okay? So I've addressed that issue.

15 If you feel people violate your constitutional
16 rights, you can pursue a civil suit against them. If
17 you have issues with your defense, you will raise them
18 with Attorney Vogelman. I will adjudicate your motion
19 for dismissal based on extreme prosecutorial misconduct
20 when it is fully briefed.

21 I have established a timetable for the
22 government to produce this information that I need. I
23 will get a transcript. I will rule on the bail hearing,
24 the request for bail, and I will rule on this extreme
25 prosecutorial misconduct motion to dismiss.

1 I've denied the motion to discharge counsel.
2 I've made clear that the defendant remains free to
3 represent himself if he chooses, but that I do not find
4 a sufficient basis to have been established to dismiss
5 Attorney Vogelman. What else? Yes?

6 THE DEFENDANT: Your Honor, that's not a
7 motion to dismiss based on outrageous prosecutorial
8 misconduct by the government. That motion was a motion
9 to dismiss based on violations of the defendant's Sixth
10 Amendment right for effective counsel. That's what that
11 motion was. I just wanted to clarify.

12 THE COURT: Okay. I thought you wanted to
13 file the extreme prosecutorial misconduct motion.

14 THE DEFENDANT: No, your Honor, because
15 everything that I had written out was sent to Attorney
16 Vogelman and he refused to file it.

17 THE COURT: Okay. So this motion is to
18 dismiss --

19 THE DEFENDANT: 2255 essentially, your Honor.

20 THE COURT: Yeah. To the extent you're asking
21 for relief based on the fact that Attorney Vogelman is
22 not an effective attorney, that motion is denied. I do
23 not have any power to dismiss the case against you
24 because your lawyer provides ineffective assistance. So
25 if that's what you're asking for, it's denied.

1 THE DEFENDANT: It's not only Attorney
2 Vogelman. It was Attorney Saxe as well, your Honor, and
3 because of certain things that they have communicated to
4 the government, certain --

5 THE COURT: I don't have the power to dismiss
6 your charges because your lawyers are bad. I have the
7 power to give you a new lawyer, but you're not asking
8 for that in this motion. I do have under limited
9 circumstances power to dismiss an indictment based on
10 extreme prosecutorial misconduct, but that's not the
11 relief that you're seeking so I don't need to grant that
12 motion.

13 THE DEFENDANT: Well, that's really what I
14 have attempted to seek, your Honor, but Attorney
15 Vogelman --

16 THE COURT: I will look at whatever it is you
17 filed. I can't understand what it is. So I will look
18 at it and do something with it. Is there anything else
19 we need to deal with today?

20 MR. VOGELMAN: Nothing, Judge. Thank you.

21 THE COURT: Okay. Thank you.

22 THE DEFENDANT: Also, real quick, your Honor,
23 I have also requested Attorney Vogelman to give me the
24 new Sentencing Guidelines that have been recalculated
25 after the two charges were dismissed. He has failed to

1 do that. He hasn't even given me my original guidelines
2 from the beginning of --

3 THE COURT: You mean he hasn't tried to figure
4 out what your expected guideline range would be.

5 THE DEFENDANT: He keeps telling me that he
6 has them at the office in a file.

7 THE COURT: Attorney Vogelman, I know that you
8 can't guarantee anything with respect to a Sentencing
9 Guideline range, but sit down based on what you know now
10 about the charges and the defendant's background and
11 give him in a letter -- send him a letter in which you
12 state for him what you believe the current guideline
13 range would be if he's convicted on the charges against
14 him.

15 MR. VOGELMAN: I will, Judge.

16 THE DEFENDANT: And just for clarification,
17 Larry, are you going to give us any issues with the
18 credibility and the investigation into the witnesses
19 that the government's using because, just so the Court's
20 aware as well, your Honor, one of the main witnesses
21 that the government's attempting to use claiming that I
22 smoked marijuana with him is a well-known drug dealer
23 from Seabrook, New Hampshire, and it has been on the
24 local police department's radar for quite some time.

25 THE COURT: You know, I've probably heard that

1 a thousand times in the last 20 years, and that's fine,
2 and he will do it. I could give the line of
3 cross-examination in my sleep of the witness who
4 testifies who's the known drug dealer testifying against
5 somebody else because I've heard -- probably heard Mr.
6 Vogelman do it. I've heard many, many, many lawyers do
7 it. It's just routine stuff. It can be done in the
8 ordinary course.

9 MR. VOGELMAN: And I have that information.

10 THE COURT: I can construct the closing
11 argument for you, too.

12 MR. VOGELMAN: I'd appreciate it.

13 THE COURT: Those are routine things that are
14 dealt with ordinarily in the course of trial.

15 THE DEFENDANT: I just wanted to bring it up,
16 your Honor.

17 THE COURT: Okay. Thank you. You're excused.

18 MS. HASKELL: What is the trial date, your
19 Honor, because we're confused. Is it for December 2nd?
20 Just so I can get it on my calendar.

21 THE COURT: Jury draw is December 2nd. We
22 generally will draw the jury and try the oldest criminal
23 case on my docket starting on that date. It could start
24 anywhere between December 2nd and the next two weeks,
25 but we'll draw the jury on December 2nd.

1 MS. HASKELL: Thank you.

2 (Adjourned at 2:30 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E
23 I, Diane M. Churas, do hereby certify that the
4 foregoing transcript is a true and accurate
5 transcription of the within proceedings, to the best of
6 my knowledge, skill, ability and belief.7
8 Submitted: 5/28/15
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
/ DIANE M. CHURAS, LCR, RPR, CRR
D LICENSED COURT REPORTER, NO. 16
STATE OF NEW HAMPSHIRE